



AMERICAN SAMOA GOVERNMENT

AMERICAN SAMOA ADMINISTRATIVE CODE 2023 EDITION

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FOREWORD

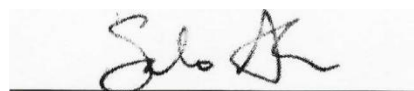
The American Samoa Administrative Code (Administrative Code) is the official reporter of the rules, regulations, and procedures adopted pursuant to the rulemaking process in the Administrative Procedures Act.¹ Often referred to as the “administrative rules”, this body of law specified rules and requirements 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; Rule 2018-0050, eff 2 Nov 2019.

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.
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 - 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
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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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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
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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
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- II. AMERICAN SAMOA POWER AUTHORITY PERSONNEL RULES*
- 20 Administration and General Provisions
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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.
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4.0238	Disabled veteran.	4.0287	Motivation.
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4.0241	Educational counseling.	4.0290	Off-site training.
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4.0243	Eligible.	4.0292	Orientation training.
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4.0247	Employee relations.	4.0296	Pay adjustment.
4.0248	Excepted service.	4.0297	Performance rating.
4.0249	Executive development.	4.0298	Performance standard.
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4.0251	First-line supervision.	4.0300	Permanent employee.
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4.0255	Grievance.	4.0304	Post-training.
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4.0257	Human relations.	4.0306	Preemployment training.
4.0258	Human relations training.	4.0307	Preference eligible.
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4.0260	Induction training.	4.0309	Probationary period.
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4.0263	Internship.	4.0312	Public administration.
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4.0277	Line.	4.0326	Salary range.
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4.0279	Management.	4.0328	Selecting authority.
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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:

- (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

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:

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 may be 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
- 4.1413 Applicability of Orders.

IV. PLAN PROVISIONS

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- 4.1414 Eligibility Requirements.
- 4.1415 Application for Enrollment.
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- 4.1418 Changes in Participation Agreement.
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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.
- 4.1442 Mailing of Payments.
- 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.

- (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.

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.

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. |
| 4.2305 | Effective date of actions. |
| 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.

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.
- (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.
- (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.

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:

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

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 not 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 1 1-84. 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.

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.

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.
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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;

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- (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 _____

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 _____

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.

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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.
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11.0224	Preapplication conferences.	11.0258	Objective in determination.
11.0225	Application-Required-Number of copies.	11.0259	Findings required.
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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.
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11.0243	Staff reports-Content.	Exhibit 1	
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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 ervices:
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.

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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- 11.0433 Leave Without Pay.
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- 11.0436 Court Leave.
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- 11.0440 Conduct of LBJ-ASMCA Employees.
- 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.
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- 11.0457 Contract Specialist.
- 11.0458 Contract Recruitment.
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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

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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:

- 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

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.

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accomplished on a non-work day and the place of registration is within reasonable one-day, roundtrip travel distance of the employee's place of residence.

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

11.0438 Administrative Leave.

- A. Administrative leave is proclaimed by the Governor and is for such purposes as national days of mourning, natural disasters, power failure, etc. Only the Governor is authorized to grant administrative leave.
- B. Administrative leave hours are paid, non-work hours for LBJ-ASMCA employees.
- C. If an LBJ-ASMCA employee is required to work on a day that has been proclaimed for most employees to be a non-work day, employee shall be given either one extra day of straight-time pay or a alternative day off within the same week.
- D. Administrative leave may be used when:
 - 1. Normal work operations are interrupted by events or emergencies that are beyond the control of management or employees, such as extreme weather conditions, serious interruptions in public transportation services except as the result of a strike, disasters or other conditions preventing employees from working or reporting to work.
 - 2. The office or project must be closed for short periods, usually one day or less but not to exceed three days, for making repairs, retooling, power failure or other managerial reasons but for longer periods, annual leave or leave without pay shall be scheduled.
 - 3. It is in the interest of the LBJ-ASMCA to relieve employees from work to take part in activities in which LBJ-ASMCA participates, providing employees can be spared without detriment to the work and when those activities do not require the closing down of LBJ-ASMCA function or project, the employment of relief workers or the payment of overtime.

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

11.0439 Unauthorized Absence.

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

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

11.0440 Conduct of LBJ-ASMCA Employees.

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

Sections:

- 11.0601 Short Title.
- 11.0602 Authority.
- 11.0603 Purpose.
- 11.0604 Definitions.
- 11.0605 Applicability.
- 11.0607 Centralization of Procurement Authority.
- 11.0608 Chief Procurement Officer.
- 11.0609 Centralized Procurement Authority.
- 11.0610 Coordination.
- 11.0611 Duties of the Attorney General.
- 11.0612 Duties of the LBJ Chief Procurement Officer.
- 11.0613 Duties of the LBJ Chief Financial Officer.
- 11.0614 Definitions.
- 11.0615 Methods of Source Selection.
- 11.0616 Small purchases.
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11.0630	Qualifications and Duties.		
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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 of 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 EP A eliminates the name of the facility from the listing;
 - (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

- (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

History: Rule 5-84, eff 11 Jul 84, (part).

Appendix I – Examination of Records

The contractor agrees that the contracting officer, the Comptroller General of the United States, or the Secretary of the Interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor involving transactions related to this contract.

The contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the contracting officer, the Comptroller General of the United States, or the Secretary of the Interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent book, documents, papers and records of such subcontractor, involving transactions related to this contract.

History: Rule 5-84, eff 11 Jul 84, (part).

Appendix J – Patents

The contractor shall hold and save the government and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the government, unless otherwise specifically stipulated in the contract documents.

License and/or royalty fees for the use of a process which is authorized by the government on the project must be reasonable, and paid to holder of the patent or his authorized licensee, directly by the government and not by or through the contractor.

If the contractor uses any design, device, or materials covered by letters of patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyright design, device,

or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The contractor and/or his sureties shall indemnify and save harmless the government from any and all claims for infringement, by reason of the use of such patented or copyrighted design, device, or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the government for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the work or after completion of the work.

History: Rule 5-84, eff 11 Jul 84, (part).

END OF TITLE 11 – HEALTH AND ECONOMIC
WELFARE SERVICES

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;

- (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

\$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.
- 12.0317 Fee schedule.
- 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

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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.
- (l) "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:

(1) When calculated by weight:

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.

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

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;
- (c) 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. (ii) Weekends: 9 holes 3.50
18 holes 7.00
- (c) All divits must be replaced as they are made by the person who made them. (iii) Holidays: 9 holes 3.50
18 holds 7.00
- (d) No golfer may hit his next shot until the following:
 - (B) Monthly rates (per person) 30.00
 - (C) Yearly rates (per person) 324.00
- (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.

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.

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.

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

- (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.
- (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.
 - (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)(1) of this section.

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

Sections

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- 19.0101 Authority.
- 19.0102 Scope of rules and commercial vehicle regulation.
- 19.0103 Administration by police.
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- 19.0110 Commercial permit and private license
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- 19.0111 Application-Consideration.
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- 19.0170 Taxi Rates
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*XI. ADOPTION OF FEDERAL
REGULATIONS*

- 19.0190 Adoption and applicability of federal
regulations
- 19.0191 Inspections for hazardous materials

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; and 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
Falenu	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
Onenoa	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.

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;

History: Comm. Commn. Regs., Rule 01-2012, eff 1 Jan 13.

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.*

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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:

- I. PASSENGER AND FREIGHT VESSELS
- 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.
- 20.0209 Pilothouse-engineer room alternate communication.
- 20.0210 Machinery inspection-Engineer duty-Negligence accountability.
- 20.0211 Machinery inspection-Standard.

- 20.0212 Tail shaft inspection-Dry-docking notice.
- 20.0213 Sea connection, bilge pump inspection.
- 20.0214 Engine, machinery inspection-Guard rails and covers.
- 20.0215 Maintenance logbook.
- 20.0216 Electrical wiring standards.
- 20.0217 Life preservers-Life jackets.
- 20.0218 Life buoys-Liferings.
- 20.0219 Lifeboats-Liferafts.
- 20.0220 Fire axes.
- 20.0221 Firehoses.
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- 20.0223 Sanitation.
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- II. SMALL VESSELS
- 20.0240 Applicability-Purpose.
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- 20.0258 Flame arrestor-Backfire flame control.
- 20.0259 Operation in noncompliance prohibited.
- 20.0260 Permitting operation in noncompliance.
- 20.0261 Bilge Pump for emergencies.
- 20.0262 Violation-penalty.

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,
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(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
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	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 RUNWAY/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:

AMERICAN SAMOA ADMINISTRATIVE CODE – 2023 EDITION

- 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

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- 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

- | | |
|--------------|-----------------|
| 1. Uninjured | ARFF Facilities |
| 2. Injured | ARFF Facilities |
| 3. 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

TITLE 24 – ECOSYSTEM PROTECTION AND DEVELOPMENT

Chapters:

- 01 Environmental Quality Commission
- 02 Water Quality Standards
- 03 Quarantine of Pets and Agricultural Products and Animals
- 04 Giant African Snail
- 05 Air Emission Rules and Regulations
- 06 Pesticide Regulation
- 07 Storage Tanks
- 08 Hazardous Materials
- 09 Fishing
- 10 Community-Based Fisheries Management Program
- 11 Hunting

TITLE 24 – CHAPTER 01 – ENVIRONMENTAL QUALITY COMMISSION

Sections:

- I. COMMISSION GENERALLY
 - 24.0101 Establishment-Composition.
 - 24.0102 Meetings-Quorum.
 - 24.0103 Rulemaking authority.
 - 24.0104 Records-Public access.
 - 24.0105 Policy.
 - 24.0106 Powers.
- II. PERMITS
 - 24.0107 Required when-Issuance legal conformity.
 - 24.0108 Application-Forms.
 - 24.0109 Application-Information accompanying.
 - 24.0110 Application-Posting-Public hearing.
 - 24.0111 Commission powers-Duration limit.
 - 24.0112 Application distribution to other agencies.
 - 24.0113 Application notice to ASG agencies-Recommendations.
 - 24.0114 Other agency consultations.
 - 24.0115 Modification-Termination.
 - 24.0116 Issuance deadline-Preventive orders.
 - 24.0117 Hearings on preventive orders.
 - 24.0118 Addition, enlargement, replacement defined.
 - 24.0119 Maintenance.
 - 24.0120 Brand names.

- 24.0121 Legal requirements unaffected.
- III. TERRITORY-WIDE AIR POLLUTION SYSTEM
 - 24.0125 Established-Pollution-source delay or prevention.
 - 24.0126 Transportation-mode inspection and testing.
- IV. INSPECTIONS, TESTING, SAMPLING, AND MONITORING
 - 24.0130 Right of entry-Inspection.
 - 24.0131 Sampling.
 - 24.0132 Operator testing and monitoring-Power to require.
- V. EMISSION AND DISCHARGE STANDARDS
 - 24.0135 Air.
 - 24.0136 Water.
- VI. EMERGENCY PROCEDURES
 - 24.0140 Order to abate-Hearing.
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- VII. HEARINGS AND JUDICIAL REVIEW
 - 24.0145 Rulemaking hearing requirement.
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 - 24.0148 Injunction granting standard.
- VIII. CONFIDENTIALITY OF RECORDS
 - 24.0150 Confidentiality standard.
 - 24.0151 Abstracted publication.
 - 24.0152 Disclosure to enforce law.
- IX. ENFORCEMENT
 - 24.0155 Notice of violation-Order to correct-Hearing.
 - 24.0156 Action after hearing-Order content generally.
 - 24.0157 Injunction enforcing order.
 - 24.0158 Voluntary compliance efforts.
 - 24.0159 Violation-Penalty.

I. COMMISSION GENERALLY

24.0101 Establishment-Composition.

(a) The environmental quality commission was established by the Legislature in 24.0105 (a) A.S.C.A., which reads as follows:

‘There is created an environmental quality commission referred to in this chapter as the commission. The commission consists of 5 members to be appointed by the Governor to serve for an indefinite period of time.’

(b) In accordance with 24.0105 (a) A.S.C.A., the Governor has designated the Lieutenant Governor as chairman of the commission and the government ecologist as the executive secretary. Other members are the director of public works, the director of economic development and planning, and the director of health, or their representatives.

History: Env. Qual. Comm. Regs., eff prior to 1975. § 1.01.

24.0102 Meetings-Quorum.

(a) Section 24.0 105 A.S.C.A., requires the commission to meet at least 4 times per year at regularly scheduled times and the commission hereby schedules meetings for 2 p.m. on the first Monday of January, March, June, and September unless otherwise announced. More frequent meetings may be called at the discretion of the chairman. A quorum of 3 members is necessary to conduct any business before the commission.

A majority vote of those present is necessary to decide all issues before the commission. A record of each meeting shall be taken and the record shall be available for public inspection.

(b) Meetings will be held in the chairman’s office unless otherwise provided in public notice of meetings.

History: Env. Qual. Comm. Regs., eff prior to 1975. § 1.02.

24.0103 Rulemaking authority.

Section 24.0106 (1) A.S.C.A., vests the commission with authority to promulgate rules.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.03.

24.0104 Records-Public access.

All rules, written statements, policies, and interpretations formulated and adopted for use by the commission in the discharge of its functions and final orders, decisions, and opinions will be maintained in the Governor’s office at Utulei and shall be available for public inspection. All requests for inspection shall be made to the chairman.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.04.

24.0105 Policy.

The policy of the commission is stated in 24.0102 A.S.C.A.:

“(a) It is the public policy of this territory and the purpose of this chapter (Chapter 24.01 A.S.C.A.) to achieve and maintain such levels of air and water quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this territory and facilitate the enjoyment of the natural attractions of this territory.

“(b) To these ends it is the purpose of this chapter (Chapter 24.01 A.S.C.A.) to provide for a coordinated territory-wide program of air and water pollution prevention, abatement, and control; and to provide a framework within which all values may be balanced in the public interest.”

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.04.

24.0106 Powers.

Pursuant to 24.0106 A.S.C.A., the commission may:

- (1) hold hearings as necessary relating to any aspect of or matter in the administration of Chapter 24.01 A.S.C.A., and compel the attendance of witnesses and the production of evidence
- (2) issue such orders as may be necessary to effectuate the purposes of Chapter 24.01 A.S.C.A., and enforce the same by all appropriate administrative and judicial proceedings;

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- (3) require access to records relating to emissions which cause or contribute to air contamination and access to records relating to discharges which cause or contribute to water pollution. (Note: The commission interprets this as authority to copy the inspected records.)
- (4) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;
- (5) prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air and water pollution in this territory;
- (6) encourage voluntary cooperation by persons and affected groups to achieve the purposes of Chapter 24.01 A.S.C.A.;
- (7) encourage and conduct studies, investigations, and research relating to air contamination, air pollution, and water pollution and their causes, effects, prevention, abatement, and control;
- (8) determine by means of field studies and sampling the degree of air contamination, air pollution, and water pollution in the territory;
- (9) establish air and water quality standards for the territory;
- (10) collect and disseminate information and conduct educational and training programs relating to air contamination, air pollution, and water pollution;
- (11) advise, consult, contract, and cooperate with other agencies of the territory, industries, and the federal government, and with interested persons or groups;
- (12) consult, upon request, with any person proposing to construct, install, or otherwise acquire an air or water contaminant source or device or system, or air or water pollution problem which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with Chapter 24.01 A.S.C.A., rules in force pursuant thereto, or any other provision of law;

- (13) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of Chapter 24.01 A.S.C.A.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.05.

II. PERMITS

24.0107 Required when-Issuance legal conformity.

- (a) The commission prohibits the construction or modification of any sources, installation, modification, or use of any equipment, device, or other article which may cause or contribute to air or water pollution or which is intended primarily to prevent or control the emission of air pollutants or discharge of water pollutants unless a permit therefor has been obtained from the commission. The issuance of permits is to be in accordance with Chapter 4.10, A.S.C.A.
- (b) No person shall construct or modify any sources, install, modify, or use any equipment or device capable of causing or contributing to air or water pollution, or designed to prevent air or water pollution, without a permit from the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975. § 2.01.

24.0108 Application-Forms.

Requests for permits shall be submitted to the commission on the forms provided to applicants by the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975. § 2.02.

24.0109 Application-Information accompanying.

The commission requires that applications for such permits be accompanied by plans, specifications, and such other information as it deems necessary.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.03.

24.0110 Application-Posting-Public hearing.

All applications will be publicly posted and public hearings will be held if requested by an interested party within 30 days of posting.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.04.

24.0111 Commission powers-Duration limit.

The commission may issue, suspend, revoke, or renew any permits required pursuant to this article, and in no case will issue permits exceeding 5 years in duration.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.05.

24.0112 Application distribution to other agencies.

Copies of all applications shall be forwarded to the U.S. Environmental Protection Agency, U.S. Coast Guard, and public health division of the department of health.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.06; and Rule 8-88. eff 27 Nov 88. § .1.

24.0113 Application notice to ASG agencies-Recommendations.

The commission shall notify all appropriate ASG agencies and afford them opportunity to submit written recommendations.

History: Env. Qual. Comm. Regs. eff prior to 1975, § 2.07.

24.0114 Other agency consultations.

Prior to permit issuance, the commission shall consult with the U.S. Environmental Protection Agency, U.S. Army of Engineers, and the U.S. Coast Guard. The commission may also consult with other public or private agencies as it deems appropriate.

History: Env. Qual. Comm. Regs., eff prior to 1975. § 2.08; and Rule 8-88. eff 27 Nov 88. § 2.

24.0115 Modification-Termination.

Permits issued by the commission may be modified or terminated for cause, including but not limited to misrepresentation, or failure to disclose fully all relevant facts, or violation of the conditions of the permit, or change in any condition requiring either temporary or permanent reduction in permitted discharge.

History: Env. Qual. Comm. Regs, eff prior to 1975, § 2.09.

24.0116 Issuance deadline-Preventive orders.

Within 90 days of the receipt of any application required pursuant to this article, the commission shall issue such permit unless it is determined that the proposed construction or modification will not be in accordance with Cit. 24.01 A.S.C.A., or rules promulgated thereunder, in which case an order shall be issued for the prevention of such construction or modification.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.10.

24.0117 Hearings on preventive orders.

In addition to any other remedies available on account of the issuance of any order prohibiting construction, installation, or establishment, and prior to invoking any such remedies, the person or persons aggrieved thereby shall, upon request in accordance with rules of the commission, be entitled to a hearing on the order. Following such hearing, the order may be affirmed, modified, or withdrawn.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.11.

24.0118 Addition, enlargement, replacement defined.

For the purposes of this article, addition to or enlargement or replacement of an air or water contaminant source, or any major alteration therein, shall be construed as construction, installation, or establishment of a new air or water pollution source.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.12.

24.0120 Brand names.

Nothing in this article shall be construed to authorize the commission to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices, or equipment otherwise available.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.14.

24.0121 Legal requirements unaffected.

The absence or failure to issue a rule, regulation, or order pursuant to this article shall not relieve any person from compliance with any emission or discharge control requirements or with any other provision of law.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.15.

III. TERRITORY-WIDE AIR POLLUTION SYSTEM

24.0125 Established-Pollution-source delay or prevention.

The commission establishes a territory-wide system under which a permit is required for the construction and operation of new sources of air pollution, and construction and operation, or modification to, existing sources. The commission may delay or prevent any construction, modification, or operation of air pollution sources which, in the opinion of the chairman, may cause the ambient air pollution level in the locality of such construction, modification, or operation to exceed limits for ambient concentration established by the American Samoa Territorial Implementation Plan promulgated pursuant to the Clean Air Act as amended, 42 U.S.C. 1875 et seq.; or which construction, modification, or operation would, in the opinion of the chairman, violate any provision of any land use permit established by the American Samoa Territorial Implementation Plan.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 3.01.

24.0126 Transportation-mode inspection and testing.

The commission may carry out a program of inspection testing of all modes of transportation to enforce the plans applicable to emission standards when necessary and practicable, and to control or limit the operation of motor vehicles and other modes of transportation when, in the opinion of the chairman, such modes of transportation are producing or pose an immediate danger of producing unacceptable levels of air pollution.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 3.02.

IV. INSPECTIONS, TESTING, SAMPLING, AND MONITORING

24.0130 Right of entry-Inspection.

Any duly authorized officer, employee, or representative of the environmental quality commission may enter and inspect, during reasonable hours, any building or place except a building primarily designed for and used exclusively for a private residence for the purposes of investigating an actual suspected source of air or water pollution and ascertaining compliance or noncompliance with Chapter 24.01 A.S.C.A., and the rules issued pursuant thereto. No person shall refuse entry or access to any authorized representative of the commission who requests appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

History: Env. Qual. Comm. Regs., eff. prior 10 1975, § 4.01.

24.0131 Sampling.

The commission may conduct tests and take samples of air and water contaminants, fuel, process materials, or other materials which affect or may affect emission or discharge of air or water pollution from any source and copy data maintained by the owner or operator of the premises relative to air or water pollution. Upon request of the commission, the person responsible for the source to be tested shall provide necessary holes in stacks, ducts, or pipes and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emission or discharge of air or water pollution. If an authorized employee of the commission, during the course of an inspection, obtains a sample of air or water contaminant, fuel, process material, or other material he shall give the owner, or operator of the equipment or fuel facility a receipt for the sample obtained.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 4.02.

24.0132 Operator testing and monitoring-Power to require.

The commission may require the operator of a pollution source to install monitoring equipment and

conduct tests, collect, monitor, maintain records and data, and submit reports on emission and discharge parameters specified by the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 4.03.

V. EMISSION AND DISCHARGE STANDARDS

24.0135 Air.

The commission reaffirms the air pollution strategy contained in the air implementation plan for the territory, as that strategy is necessary to maintain high air quality within the territory. All federal rules, regulations, and law will also be strictly adhered to within the territory.

History: Env. Qual. Comm. Regs. eff prior to 1975, § 5.01.

24.0136 Water.

Discharges into the waters of the territory must comply with all rules of the commission and “National Pollutant Discharge Elimination System Rules and Regulations” promulgated by the federal Environmental Protection Agency. All applicable NPDES forms will be used by the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 5.02.

VI. EMERGENCY PROCEDURES

24.0140 Order to abate-Hearing.

When the chairman of the commission finds that a generalized condition of air or water pollution exists or that emissions or discharges of one or more air or water contaminant sources is causing imminent danger to human health and safety and that it creates an emergency requiring immediate action to protect human health or safety, the chairman, with the concurrence of the Governor, shall order persons causing or contributing to the air or water pollution to reduce or discontinue immediately the emission or discharge of air contaminants or water pollutants, and such order shall fix a place and time not later than 24 hours thereafter for a hearing to be held before the commission. Not more than 24 hours after the commencement of such hearing and without adjournment thereof, the commission shall affirm, modify, or set aside the order of the chairman.

History: Env. Qual. Comm. Regs. eff prior to 1975, § 7.01.

24.0141 Suit to restrain.

Upon receipt of evidence that a pollution source or combination of sources is presenting imminent and substantial endangerment to the health of persons, the commission may bring a suit to immediately restrain any person causing or contributing to such pollution.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 7.02.

VII. HEARINGS AND JUDICIAL REVIEW

24.0145 Rulemaking hearing requirement.

No rule and no amendment or repeal thereof shall take effect except after public hearing on due notice as provided in the Chapter 4.10 A.S.C.A.

History: Env. Qual. Comm. Regs., eff. prior to 1975, § 8.01.

24.0146 Emergency orders.

Nothing in this article shall be construed to require a hearing prior to the issuance of an emergency order pursuant to 24.0106 A.S.C.A.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 8.02.

24.0147 Judicial review.

Any person aggrieved by an order of the commission may have judicial review thereof by filing a petition with the High Court of American Samoa no later than 20 days after being notified that the order has been entered. The petition shall seek an order by the High Court which directs the commission to modify or withdraw its order affecting the petitioner. It shall be granted only when the High Court finds from a review of all the evidence which was before the commission that the commission acted arbitrarily or capriciously.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 8.03.

24.0148 Injunction granting standard.

In the event the commission petitions the High Court for an injunction pursuant to 24.0152 A.S.C.A., the High Court shall grant such injunction unless the High Court finds from a review of all the evidence which was before the commission that the commission acted arbitrarily or capriciously.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 8.04.

VIII. CONFIDENTIALITY OF RECORDS

24.0150 Confidentiality standard.

Any records, reports, or information obtained shall be available to the public except that upon a showing satisfactory to the commission by any person that records, reports, or information, or a particular part thereof (other than emission or discharge data), to which the commission has access, if made public, would divulge production or sales figures or methods, processes, or production unique to such person, or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the commission shall consider such record, report, or information or particular portion thereof confidential.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 9.01.

24.0151 Abstracted publication.

Nothing in this chapter shall be construed to prevent the use of such records or information by the commission in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere; provided that such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 9.02.

24.0152 Disclosure to enforce law.

Nothing in this chapter shall be construed to prevent disclosure of such reports, records, or information to federal, state, or local representatives as necessary for purposes of administration of any federal, state, or local air or water pollution control laws, or when relevant in any proceeding under Title 24 A.S.C.A.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 9.03.

IX. ENFORCEMENT

24.0155 Notice of violation-Order to correct-Hearing.

Whenever the commission has reason to believe that a violation of any provision of any rule pursuant to Chapter 24.01 A.S.C.A., has occurred, it may cause

written notice to be served upon the alleged violator or violators. The notice shall specify the provisions of Chapter 24.01 A.S.C.A., or rule alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than ten days after the date the notice and order are served, The person or persons named therein request in writing a hearing before the commission. Upon such request, the commission shall hold a hearing. In lieu of an order, the commission may require that the alleged violator or violators appear before the commission for a hearing at a time and place specified in the notice and answer the charges complained of, or the commission may initiate further action pursuant to the A.S.C.A., and all adopted rules of the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 6.01.

24.0156 Action after hearing-Order content generally.

If after a hearing held pursuant to 24.0115, the commission finds that a violation or violations have occurred, it shall affirm or modify its order previously issued, or issue an appropriate order or orders for the prevention, abatement or control of the emissions or discharges involved or for the taking of such other corrective action as may be appropriate. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the emissions of discharges.

History: Env. Qual. Comm. Regs. eff prior 1975, § 6.02.

24.0157 Injunction enforcing order.

In the event the procedures outlined in 24.0155 and 24.0156 are followed and the offender falls to comply with the order issued by the commission, the commission, in addition to other remedies set out in this chapter, may apply to the High Court of American Samoa for an injunction requiring the offender to cease doing business until such time as the offender furnishes definitive plans and specifications, satisfactory to the commission, to show compliance with Chapter 24.01 A.S.C.A., the rules pursuant

thereto, and the orders of the commission. When the offender furnishes the plans called for under this section the commission shall immediately petition the High Court to lift such injunction.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 6.03.

24.0158 Voluntary compliance efforts.

Nothing shall prevent the commission from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 6.04.

24.0159 Violation-Penalty.

Penalties for violation of this chapter shall be the same as for the violation of Chapter 24.01 A.S.C.A., as amended.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 6.05.

Appendix A – Summons Sample Form

No: _____

SUMMONS

Date _____

The undersigned member of the Environmental Quality Commission has been informed, and upon such information, has reason to believe that you, SAMPLE ONLY, may be found in violation of the Environmental Quality Act, Chapter 24.01 ASCA. In addition to having the power to adopt, amend, and repeal rules and regulations to assure environmental quality, the Environmental Quality Commission may issue such orders as may be necessary to enforce the rules of the Commission.

The law further states that any person who violates any provision of the Act, or any rule or regulation enforced thereto, shall be subject to a fine not to exceed \$500, with each day of violation constituting a separate offense.

Therefore, under the powers of the American Samoa Code Annotated and the rules adopted by the Environmental Quality Commission, you are hereby ordered to implement the changes described below within 10 days. If corrective action is not take by that time, you shall become subject to further legal action.

You may request a hearing before the Environmental Quality Commission by contacting the Office of the Governor within 10 days of the date of this order. If you have further questions concerning this summons notify the Environmental Quality Commission at the Office of the Governor.

Violator

Signature of Issuing Authority

Place of Offense.

Description of Offense.

Corrective Changes Required.

TITLE 24 – CHAPTER 02 – WATER QUALITY STANDARDS

- Sections:
- 24.0201 Definitions.
- 24.0202 Policy of Water Quality Degradation.
- 24.0203 Authority.
- 24.0204 Standards Review.
- 24.0205 Water Classifications – Protected and Prohibited Uses.
- 24.0206 Standards of Water Quality.
- 24.0207 Zones of Mixing.
- 24.0208 Pollution Control
- 24.0209 Water Quality Certifications
- 24.0210 Enforcement, Compliance and Water Quality Monitoring

Appendix A – Ammonia Toxicity Standards for Fresh and Marine Waters

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.

UPDATE to Editor's Note – 25 Mar 22: Text for Rule discovered and verified through AS-EPA.

24.0201 Definitions.

As used in this chapter and in conformance with the Federal Water Pollution Control Act, as amended:

- (a) “acute exposure value” means the threshold value at or below which there should be no unacceptable effects to aquatic organisms and their uses if the one-hour concentration does not exceed the value more than once every three years on the average;
- (b) “acute toxicity” means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms;
- (c) “ambient conditions” means the water quality condition that would occur in the receiving waters if these waters were not influenced by any proposed new human activity or discharge;
- (d) “animal pen” refers to an animal feeding operation (AFO) facility or lot (other than an aquatic animal production facility) which is separate from any waste treatment facilities, where animals have been, are, or will be stabled or confined and fed or maintained;
- (e) “ASAC” means the American Samoa Administrative Code;
- (f) “ASCA” means the American Samoa Code Annotated;
- (g) “AS-EPA” means the American Samoa Environmental Protection Agency, the agency responsible for implementation and enforcement of Water Quality Standards in American Samoa;
- (h) “ASG” means the American Samoa Government;
- (i) “chronic exposure value” means the threshold value at or below which there should be no unacceptable effects to aquatic organisms and their uses if the four-day concentration does not exceed that value more than once every three years on the average;
- (j) “chronic toxicity” means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as an alteration in growth rate or reproduction;
- (k) “class I waters” means fresh surface waters above impoundments or diversions of water used as a potable water supply;
- (l) “class II waters” means all fresh surface waters that are not class I;
- (m) “Clean Water Act” or “CWA” means the Federal Water Pollution Control Act;
- (n) “discharge of a pollutant” means any addition of any pollutant to the waters of American Samoa from any point source;
- (o) “embayment” means a body of water subject to tidal action and bounded by headlands which restrict the exchange of water with the open ocean. A bay or lagoon is an embayment if the ratio of the volume of water (cubic feet) to the cross-sectional area (square feet) at the entrance is more than 700, when determined at mean lower low water. Embayments include Pago Pago Harbor, Fagatele Bay, Pala Lagoon, Afono Bay, Fagasa Bay, Masefau Bay, and Vatia Bay.
- (p) “EQC” means the Environmental Quality Commission of the American Samoa Government and its authorized agents;
- (q) “fresh surface waters” means all fresh territorial waters including perennial, intermittent, and ephemeral freshwater streams, all natural and artificial impoundments, springs, seeps and wetlands, including coastal wetlands not surface-connected to the ocean. This includes all surface territorial waters that are not embayments, open coastal waters, or ocean waters;
- (r) “geometric mean” is defined as nth root of the products of C1 to Cn in which n is the number of samples analyzed during the period and C is the concentration of the parameter found in each sample. The geomean is calculated by taking the log10 of sample values, averaging those values and the raising the average to the power of 10;

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- (s) “ground water” means water in the part of the ground that includes all subsurface waters, basal and parabasal water, perched water, water percolating through the unsaturated zone, and all saline waters below and along the perimeter of the basal fresh water body;
- (t) “hazardous materials” means any material that poses a threat to human health and/or the environment when improperly managed, including toxic, corrosive, ignitable, explosive or chemically reactive substances;
- (u) “light penetration depth” means the depth reached by one percent of the sunlight incident on the surface of a body of water;
- (v) “NPDES” means the National Pollutant Discharge Elimination System;
- (w) “natural conditions” describes the quality of surface and marine water reasonably assumed to be not influenced by human-caused pollution or disturbance;
- (x) “nonpoint source pollution” is defined as pollution caused by sediments, nutrients and organic and toxic substances originating from land use activities and/or from the atmosphere, which are carried to receiving waters by runoff at a rate that exceeds reference condition levels;
- (y) “ocean waters” means those waters that extend from the 100-fathom (600-foot or 183-meter) depth contour seaward;
- (z) “open coastal waters” means those waters that begin at the shoreline and extend seaward to the 100-fathom (600-foot or 183-meter) depth contour from mean lower low water. This category includes small bays with good water movement which do not qualify as embayments;
- (aa) “Pago Pago Harbor” is defined as landward of a line drawn from Niuloa Point to Breaker’s Point;
- (bb) “Pala Lagoon” is defined as that body of water inside a line drawn from the eastern most point of the airport to the nearest part of Coconut Point;
- (cc) “person” means any individual, partnership, firm, state, federal government, association, municipality, public or private corporation, subdivision or agency of the territory, trust, estate or any other legal entity or interstate body;
- (dd) “point source” means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged;
- (ee) “pollutant” means dredged spoil, sediment, solid waste, petroleum product, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, excavated material, or industrial, municipal, and agricultural waste discharged into water;
- (ff) “pollution” means the manmade or man induced alteration of the physical, chemical, biological, or radiological condition of territorial waters;
- (gg) “process waste water” means any water which comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by product, or waste product during manufacturing or processing operations;
- (hh) “reference conditions” describes the characteristics of water body segments least impaired by human activities, where the influence of human activities is reasonably assumed to be present. As such, reference conditions can be used to describe attainable biological or habitat conditions for water body segments with common watershed or catchment characteristics within defined water body classes;
- (ii) “Statistical Threshold Value” means the approximation of the 90th percentile of the water quality distribution;
- (jj) “Territorial waters” means waters of the United States as defined in 40 CFR 122.2, as well as those that are located within the jurisdiction of the territory;

(kk) “wetlands” mean those areas that are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, mangroves, streams, springs, cultivated marshes, and similar areas;

(ll) “zone of initial dilution” or “ZID” is that area of a plume where dilution is achieved due to the combined effects of momentum and buoyancy of the effluent discharged from an orifice. Unless otherwise approved by the EQC and US EPA, the zone of initial dilution and initial dilution ratio shall be determined using the latest version of the UDKHDEN model (EPA/600/3-85-073a,b), assuming zero ambient current and representative reference condition concentrations of the pollutant in question;

(mm) “zone of mixing” or “ZOM” means a defined portion of a water body receiving water around a point source within which specific modifications of applicable water quality standards are permitted by the EQC.

History: Rule 8-81, eff 16 Jun 81, § 1; Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: 2005, new definitions and renumbering; 2022, new definitions and renumbering

24.0202 Policy of Water Quality Degradation.

(a) It is the policy of the Environmental Quality Commission (EQC) that existing water uses and the level of water quality necessary to protect existing uses shall be maintained. Any water quality degradation which would interfere with or become injurious to these existing uses is prohibited. Existing uses are those uses identified in these standards.

(b) Waters whose existing quality exceeds the level necessary to support existing uses shall not be degraded unless and until the EQC finds, after full satisfaction of the intergovernmental coordinating and public participation provisions contained in the Environmental Quality Act (ASCA Title 24), that allowing lower water quality is necessary to accommodate important economic or social needs of the Territory. In no

event, however, may water quality be degraded to an extent that it would interfere with or become injurious to existing uses.

(c) No further degradation shall be allowed in waters which constitute an outstanding public resource or in waters of exceptional recreational or ecological significance. Waters which receive this protection shall be classified as unique waters by the EQC.

(d) Subject to the provisions of sections (a)-(c) above, the EQC may allow limited degradation if it is determined that all the following criteria are met:

(1) The proposed degraded level of water quality will support existing uses;

(2) A compelling economic or social need of the Territory is served by allowing limited degradation;

(3) The highest practicable statutory and regulatory requirements will be met by existing and new point sources of pollutants; and

(4) All cost-effective and reasonable best management practices for non-point sources of pollutants will be achieved.

(e) In those cases where potential water quality impairment is associated with a thermal discharge, nothing in these regulations or their implementation shall be inconsistent with Section 316 of the Clean Water Act.

(f) In carrying out its responsibilities under these standards, the EQC and AS-EPA will undertake such activities and studies as may be necessary to implement the above policies. These activities and studies may include, but are not limited to:

(1) monitoring the quality of water and the impacts of pollutant discharges;

(2) requiring appropriate levels of treatment and other pollutant control measures through conditions placed on water quality certifications (ASAC § 24.0209) and other approvals granted by the EQC; and

- (3) performing inspections and, as necessary, undertaking enforcement actions to assure compliance.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

24.0203 Authority.

These standards are adopted under the provisions of the American Samoa Environmental Quality Act, ASCA, Title 24, Chapter 1.

History: Rule 8-81, eff 16 Jun 81, § 1; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0204 Standards Review.

The EQC may revise these standards at any time in accordance with the American Samoa Administrative Procedures Act (APA), as set forth in ASCA, Title 4, Chapter 10, and the US EPA public participation regulation, as set forth in 40 CFR part 25 and 40 CFR part 131. The EQC will submit any such revisions to US EPA in accordance with §303(c) of the CWA., as amended.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0205 Water Classifications – Protected and Prohibited Uses.

- (a) Prohibited uses and activities applicable to all waters:
 - (1) Dumping of solid waste, including dead animals, directly into the water or in a manner that could reasonably be expected to adversely affect water quality;
 - (2) The discharge of oil, sludge, oil refuse, fuel oil, or bilge waters directly into the water or in a manner that could reasonably be expected to adversely affect water quality;
 - (3) The discharge of toxic, hazardous or radioactive waste directly into the water or in a manner that could reasonably be expected to adversely affect water quality;
 - (4) The dumping or discharge of industrial, domestic or animal waste except as approved by the EQC and, as applicable, permitted by the US EPA; and

- (5) Whole and limited body-contact recreation, e.g., swimming, snorkeling, surfing, and scuba diving within any zone of mixing.

(b) Fresh Surface Waters

(1) Class 1 Fresh Surface Waters

- (A) Class 1 waters are to remain in as near their natural state as possible with a minimum of pollution from any human activity. Protected uses of these waters are: potable water supplies, support and propagation of indigenous aquatic and terrestrial life, and compatible recreation and aesthetic enjoyment.

- (B) Prohibited uses and activities include, but are not limited to:

- (i) Point source discharges of pollutants;
- (ii) Dredging and filling activities;
- (iii) Bathing, including washing clothes and dishes;
- (iv) Animal pens over or within 100 feet of the water body;
- (v) Siting of septic tanks including drain fields within 200 feet of the water body;
- (vi) Land disturbing (e.g., grading, tillage) activities within 100 feet of the water body; and
- (vii) Wood cutting or clearing within 100 feet of the water body.

(2) Class 2 Fresh Surface Waters

- (A) Class 2 waters shall be protected for the support and propagation of indigenous aquatic life, recreation in and on the water, and aesthetic enjoyment.

- (B) Prohibited uses and activities include, but are not limited to:

- (i) Point source discharges of pollutants except as approved by

the EQC. No zones of mixing will be granted;

(ii) Dredging or filling activities, except as approved by EQC;

(iii) Bathing, including washing clothes and dishes;

(iv) Animal pens over or within 50 feet of the water body;

(v) Siting of septic tanks:

(a) Hollow block constructed tanks within 50 feet of the water body;

(b) Cast-in-place concrete tanks within 30 feet of the water body;

(c) Molded plastic tanks (e.g., high-density polyethylene (HDPE) within 20 feet of the water body.

(vi) Siting of septic tank drain fields within 50 feet of the water body.

(vii) Land disturbing (e.g., grading, tillage) activities within 50 feet of the water body; and

(viii) Wood cutting or clearing within 50 feet of the water body.

(c) Ground Waters

(1) Class 1G Ground Waters

(A) Class 1G groundwaters are current or potential supplies of potable water and their associated recharge areas and shall be protected as potable water supplies. Unless otherwise identified, Class 1G groundwaters include all ground water with a naturally occurring salinity of less than 10,000 mg/l.

(B) Prohibited uses and activities include, but are not limited to:

(i) Direct discharge of any waste through injection wells;

(ii) The surface or subsurface discharge of industrial waste;

(iii) Dumping or landfilling of solid waste on the surface or subsurface; and

(iv) The surface or subsurface discharge of treated industrial, human or animal waste, except through treatment and disposal devices or systems approved by EQC.

(2) Class 2G Ground Waters

(A) Class 2G groundwaters are waters with naturally occurring salinities of 10,000 mg/l or more, or other groundwaters not designated as class 1G.

(B) Prohibited uses and activities include, but are not limited to:

(i) The surface or subsurface discharge of industrial, human or animal waste, except through treatment and disposal systems approved by the EQC.

(d) Wetlands

(1) All wetlands are to remain in as near their natural state as possible and shall be protected to support the propagation of indigenous aquatic and terrestrial life, recreation and subsistence fishing, food cultivation and gathering, aesthetic enjoyment, recreation in an on water, flood control, and recharge of groundwaters.

(2) Prohibited uses and activities include, but are not limited to:

(A) Point source discharges of pollutants;

(B) Dredging and filling activities, except as approved by the EQC;

(C) Animal pens directly over or within 50 feet of the wetland; and

(D) Siting of septic tanks including drain fields within 50 feet of the wetland.

(e) Embayments

All embayments are to remain in as nearly their natural state as possible.

(1) Pago Pago Harbor: Pago Pago Harbor has been designated by the American Samoa Government to be developed into a transshipment center for the South Pacific. Recognizing its unique position as an embayment where water quality has been degraded from the natural condition, the EQC has established a separate set of standards for Pago Pago Harbor.

(A) Protected uses for Pago Pago Harbor:

- (i) Recreational and subsistence fishing except for exclusions as specified under federal regulations such as no take zones;
- (ii) Boat-launching ramps and designated mooring areas;
- (iii) Subsistence food gathering; e.g. shellfish harvesting except for exclusions as specified under federal regulations such as no take zones;
- (iv) Aesthetic enjoyment;
- (v) Whole and limited body-contact recreation, e.g. swimming, snorkeling, and scuba diving;
- (vi) Support and propagation of marine life;
- (vii) Industrial water supply;
- (viii) Mari-culture development except for exclusions as specified under federal regulations such as no take zones;
- (ix) Normal harbor activities; e.g. ship movements, docking, loading and unloading, marine railways and floating drydocks; and

(x) Scientific investigations.

(B) Prohibited uses include but are not limited to:

- (i) Dumping or discharge of solid waste;
- (ii) Animal pens over or within 50 feet of any shoreline;
- (iii) Dredging and filling activities; except as approved by the EQC;
- (iv) Toxic, hazardous and radioactive waste discharges; and
- (v) Discharge of oil sludge, oil refuse, fuel oil, or bilge water, or any other wastewater from any vessel or unpermitted shoreside facility.

(C) Zones of mixing may be granted in Pago Pago Harbor by the EQC, however, no zones of mixing will be allowed within 500 feet of Goat Island Point or beneath this surface area to the bottom of the harbor.

(2) Special embayments

(A) Fagatele Bay is designated as marine sanctuary by the U.S. Department of Commerce because of pristine water quality, remote location, and rich underwater resources. Therefore, the EQC has assigned specific water quality standards to prohibit any reduction in water quality in the bay.

(B) Nu'uuli Pala Lagoon is a shallow embayment that is important as a breeding ground for the marine life of the Territory. It has been designated by the American Samoa Coastal Management Plan Rules as a special management area. Therefore, the EQC has also classified the Nu'uuli Pala Lagoon as a special embayment.

(C) Protected uses:

- (i) Recreational and subsistence fishing except for exclusions as

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- specified under federal regulations such as no take zones;
- (ii) Subsistence food gathering, e.g. shellfish harvesting except for exclusions as specified under federal regulations such as no take zones;
 - (iii) Aesthetic enjoyment;
 - (iv) Whole and limited body-contact recreation, e.g. swimming, snorkeling, surfing, and scuba diving;
 - (v) Support and propagation of marine life;
 - (vi) Mari-culture development except for exclusions as specified under federal regulations such as no take zones; and
 - (vii) Scientific investigations.
- (D) Prohibited uses include but are not limited to:
- (i) Dumping or discharge of solid or industrial waste materials;
 - (ii) Animal pens over or within 50 feet of any shoreline;
 - (iii) Dredging and filling activities, except when approved by the EQC;
 - (iv) Toxic, hazardous and radioactive waste discharges; and
 - (v) Discharge of oil sludge, oil refuse, fuel oil, or bilge water, or any other wastewater from any vessel or unpermitted shoreside facility.
- (E) Zones of mixing will not be allowed in Pala Lagoon or Fagatele Bay.
- (3) Other Embayments: All embayments of the Territory excluding Pago Pago Harbor, Pala Lagoon, and Fagatele Bay are included in this category.
- (A) Protected uses:
- (i) Recreational and subsistence fishing except for exclusions as specified under federal regulations such as no take zones;
 - (ii) Boat-launching ramps and designated mooring area;
 - (iii) Subsistence food gathering; e.g. shellfish harvesting except for exclusions as specified under federal regulations such as no take zones;
 - (iv) Aesthetic enjoyment;
 - (v) Whole and limited body-contact recreation, e.g., bathing, swimming, snorkeling, surfing, and scuba diving;
 - (vi) Support and propagation of marine life; and
 - (vii) Mari-culture development except for exclusions as specified under federal regulations such as no take zones.
- (B) Prohibited uses include but are not limited to:
- (i) Dumping or discharge of solid or industrial waste material;
 - (ii) Animal pens over or within 50 feet of any shoreline;
 - (iii) Dredging and filling activities, except when approved by EQC;
 - (iv) Toxic, hazardous and radioactive waste discharges; and
 - (v) Discharge of oil sludge, oil refuse, fuel oil, or bilge water from any vessel or shoreside facility.
- (C) Zones of mixing may be granted in the embayments included in this paragraph by EQC.
- (f) Open Coastal Waters

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- (1) Protected uses: exclusions as specified under federal regulations such as no take zones;
 - (A) Commercial, subsistence, and recreational fishing except for exclusions as specified under federal regulations such as no take zones;
 - (B) Scientific investigations;
 - (C) Whole and limited body-contact recreation, e.g., swimming, snorkeling, surfing, and scuba diving;
 - (D) Harbors and boat-launching ramps;
 - (E) Commercial and recreational boating;
 - (F) The support and propagation of marine life; and
 - (G) Aesthetic enjoyment.
- (2) Prohibited uses include but are not limited to:
 - (A) Offshore oil recovery;
 - (B) Dumping or discharge of solid or industrial waste material;
 - (C) Discharge of oil sludge, oil refuse, fuel oil, bilge waters, or any other wastewater from any vessel or unpermitted shore-side facility;
 - (D) Animal pens over or within 50 feet of any shoreline;
 - (E) Dredging and filling activities except when approved by the EQC;
 - (F) Toxic, hazardous and radioactive waste discharges; and
 - (G) Point source discharges in Manu'a off Ofu Park and between Ofu Park and the Ofu-Olosega Bridge within 1,000 feet of the bridge.

- (B) Scientific investigations;
 - (C) Commercial and recreational boating;
 - (D) The support and propagation of marine life;
 - (E) Aesthetic enjoyment; and
 - (F) Whole or limited body-contact recreation.
- (2) Prohibited uses include but are not limited to:
 - (A) Discharge of oil sludge, oil refuse, fuel oil, bilge waters, or any other wastewater from any vessel;
 - (B) Dumping of solid or industrial waste materials without an EPA ocean dumping permit, except as approved by EQC under exclusions in the federal ocean dumping regulations; and
 - (C) Toxic, hazardous and radioactive waste discharges.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0206 Standards of Water Quality.

The following standards apply to all territorial and ground waters including but not limited to fresh surface waters, ground waters, embayments, open coastal waters, and oceanic waters of the territory, except as otherwise provided in §24.0207 (Zones of Mixing):

- (a) They shall be substantially free from materials attributable to sewage, industrial wastes, or other activities of man that will produce objectionable color, odor, or taste, either of itself or in combinations, or in the biota;
- (b) They shall be substantially free from visible floating materials, grease, oil, scum, foam, and other floating material attributable to sewage, industrial wastes, or other activities of man;

(g) Ocean Waters

- (1) Protected uses:
 - (A) Commercial, subsistence, and recreational fishing except for

- (c) They shall be substantially free from materials attributable to sewage, industrial wastes, or other activities of man that will produce visible turbidity or settle to form objectionable deposits;
- (d) They shall be substantially free from substances and conditions or combinations thereof attributable to sewage, industrial wastes, or other activities of man which may be toxic to humans, other animals, plants, and aquatic life or produce undesirable aquatic life;
- (e) The temperature shall not deviate more than 1.5 degrees Fahrenheit from conditions which would occur naturally and shall not fluctuate more than 1-degree Fahrenheit on an hourly basis or exceed 85 degrees Fahrenheit due to the influence of other than natural causes;
- (f) Radioactivity:
 - (1) Since human exposure to any ionizing radiation is undesirable, the concentration of radioactivity in any waters will be maintained at the lowest practicable level.
 - (2) No radioactive materials shall be present in any waters as a consequence of the failure of an installation to exercise appropriate controls to eliminate releases.
 - (3) The concentration of radioactivity shall not:
 - (A) result in accumulations or radioactivity in edible plants and animals that present a hazard to consumers or are harmful to aquatic or terrestrial life, as recommended by the Federal Radiation Council in the “Radiation Protection Guides”;
 - (B) exceed 1/30 of the maximum permissible concentrations (MPC) values given for continuous occupational exposures in the National Bureau of Standards “Handbook No. 69”, as revised; or
 - (C) exceed the current National Primary Drinking Water Regulations for waters used for public or domestic water supplies.
- (g) Toxic Substances:
 - (1) Class 1 Surface Waters and Class 1G Groundwater.

The concentration of toxic pollutants shall not exceed the more stringent of the aquatic life criteria for freshwater or the human health concentration criteria for consumption of water and organisms in the priority toxic pollutant table of the National Recommended Water Quality Criteria 2002, EPA-822-R-02-047, November 2002 (EPA 2002) or the most recent version.
 - (2) Class 2 Surface Water and Wetlands.

The concentration of toxic pollutants shall not exceed the more stringent of the aquatic life criteria for freshwater or the human health concentration criteria for consumption of water and organisms found in EPA 2002 or the most recent version.
 - (3) All Embayments, Open Coastal Waters and Ocean Waters.

Except as may be allowed by the EQC within a Zone of Mixing (ASAC § 24.0207), the concentration of toxic pollutants shall not exceed the more stringent of the aquatic life criteria for marine waters or the human health concentration criteria for consumption of organisms found in EPA 2002 or the most recent version.
 - (4) Subject to US EPA approval, the EQC may from time to time adopt site-specific toxic pollutant criteria. Any such adoption shall involve public participation and be based upon site-specific data and studies demonstrating that the alternate criteria will support the propagation of aquatic life and protect the public health.
- (h) Toxicity Requirements - Acute and Chronic
 - (1) All effluents containing materials attributable to the activities of man shall be considered harmful unless acceptable bioassay tests have shown otherwise. In its discretion the EQC may require the person

responsible for the discharge of the effluent to perform bioassay tests on the effluent in question.

- (2) Compliance with §24.0206(d) of these standards will be determined using indicator organisms, analysis of species diversity, population density, growth anomalies, bioassays, or other appropriate methods as specified by the EQC.
- (3) The chronic effect on test organisms outside a zone of mixing, if one exists, in the water body receiving the effluent in question shall not be more than that for waters of the same water body that are unaffected by the discharge of pollutant, or, when necessary for other control water meeting the criteria described in the latest edition of “Standard Methods for the Examination of Water and Wastewater.”
- (4) Compliance with the above standards shall be evaluated with a 96-hour bioassay or short-term method for estimating chronic toxicity using methods described in the most recently updated versions of the following documents:
 - (A) EPA/821/R-02-013 Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Fourth Edition, 2002.
 - (B) EPA/600/4-90-027F Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Cincinnati, Ohio, EMSL, Fourth Edition, 1993.
 - (C) EPA/600/R-95-136 Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to West Coast Marine and Estuarine Organisms, Cincinnati, Ohio, EMSL, 1995.

(i) There shall be no changes in basin geometry or freshwater inflow that will alter current patterns in such a way as to adversely affect existing

biological populations or sediment distribution. To protect estuarine organisms, no change in channels, basin geometry, or freshwater influx shall be made which would cause permanent changes in existing isohaline patterns of more than 10 percent.

- (j) The following additional toxic standards shall apply:
 - (1) Arsenic: The human health numeric criteria for arsenic in the EPA 2002 publication are excluded from the American Samoa Water Quality Standards and instead, the American Samoa human health criteria for arsenic for freshwaters is 10 µg/l.
 - (2) Total Mercury: In addition to the methyl mercury criteria for human health from the EPA 2002 publication, the water column concentration of mercury shall not exceed 0.05 µg/l.
 - (3) Total Residual Chlorine: Total residual chlorine in any ambient water shall not exceed 11 micrograms per liter for fresh water and 7.5 micrograms per liter for marine waters.
- (k) Fresh surface waters. The following standards apply specifically to all fresh surface waters of the territory:

Parameter	Median ¹ not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)	5	8	12
Total Phosphorus (µg/l as P)	175	390	635
Total Nitrogen (µg/l as N)	300	650	1000

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Total Suspended Solids (mg/l)	5	10	15
¹ Refer to most recent version of “AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria” for median calculation method.			
Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.		
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 75% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.		
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.		
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)		
E. coli:	126 per 100 ml (geometric mean indicator density) 410 per 100 ml (statistical threshold value)		

(l) Embayments.

The following standards apply to all embayments except Pago Pago Harbor, Fagatele Bay and Pala Lagoon:

Parameter	Median ¹ not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)	0.35	0.45	0.60
Total Phosphorus (µg/l as P)	20	40	60
Total Nitrogen (µg/l as N)	150	250	350

Chlorophyll a (µg/l)	0.5	1.5	3.0
Light Penetration ² (feet)	120	100	75
¹ Refer to most recent version of “AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria” for median calculation method.			
² Light Penetration to exceed given values			
Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.		
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 80% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.		
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.		
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)		

(m) Pago Pago Harbor

The following standards apply specifically to Pago Pago Harbor:

Parameter	Median ¹ not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)	0.75	1.0	1.5
Total Phosphorus (µg/l as P)	30	60	90
Total Nitrogen (µg/l as N)	200	350	500
Chlorophyll a (µg/l)	1.0	3.0	5.0

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Light Penetration ² (feet)	65	45	35
¹ Refer to most recent version of “AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria” for median calculation method.			
² Light Penetration to exceed given values			
Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.		
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 80% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.		
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.		
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)		

¹ Refer to most recent version of “AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria” for median calculation method.	
² Light Penetration to exceed given values	
Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 80% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)

(n) Embayments – Fagatele Bay and Pala Lagoon

The following standards apply specifically to Fagatele Bay and Pala Lagoon:

Parameter	Median ¹ not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)			
Fagatele Bay	0.25	0.35	0.50
Pala Lagoon	0.75	1.5	2.5
Total Phosphorus (µg/l as P)	15	36	60
Total Nitrogen (µg/l as N)	135	220	300
Chlorophyll a (µg/l)	0.35	0.60	1.0
Light Penetration ² (feet)	130	110	90

(o) Open Coastal Waters

The following apply specifically to open coastal waters:

Parameter	Median ¹ not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)	0.25	0.35	0.45
Total Phosphorus (µg/l as P)	15	30	50
Total Nitrogen (µg/l as N)	130	210	280
Chlorophyll a (µg/l)	0.25	0.50	0.75
Light Penetration ² (feet)	130	110	90
¹ Refer to most recent version of “AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria” for median calculation method.			
² Light Penetration to exceed given values			

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Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 80% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)

	conditions cause lower dissolved oxygen levels, controllable water quality factors shall not cause further reductions.
pH:	The pH range shall be 6.5 to 8.6 and be within 0.2 pH units of that which would occur naturally.
Enterococci:	35 per 100 ml (geometric mean indicator density) 130 per 100 ml (statistical threshold value)

(p) Ocean Waters

The following apply specifically to ocean waters:

Parameter	Median ¹ not to exceed	Not to exceed more than 10% of the time	Not to exceed more than 2% of the time
Turbidity (NTU)	0.20	0.29	0.36
Total Phosphorus (µg/l as P)	11	23	35
Total Nitrogen (µg/l as N)	115	180	230
Chlorophyll a (µg/l)	0.18	0.40	0.65
Light Penetration ² (feet)	150	132	120
¹ Refer to most recent version of “AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria” for median calculation method.			
² Light Penetration to exceed given values			
Ammonia:	The ammonia toxicity standards for fresh and marine waters are tabulated in Appendix A.		
Dissolved Oxygen:	Concentration of dissolved oxygen shall not be decreased to less than 80% saturation at any time, as influenced by salinity or naturally occurring temperature variations. Where natural		

(q) Implementation Provisions for Bacterial Characteristics

Compliance with numeric criteria shall be determined in accordance with the most recent version of “AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria”.

Refer to the most recent version of "Territory of American Samoa Integrated Water Quality Monitoring and Assessment Report" for use support evaluation methodology including 303d listing.

(r) Biocriteria

The Territory shall preserve, protect, and restore water resources to as near their natural condition. The condition of these waterbodies shall be determined from measures of physical, chemical, and biological characteristics of each waterbody type, according to its designated use. As a component of these measures, the biological integrity of the benthic communities living within waters shall be assessed by comparison to reference conditions(s) with similar abiotic and biotic environmental settings that represent the optimal or least impacted condition for that system. Such reference conditions shall be those observed to support the greatest community evenness, diversity, and abundance of aquatic life as is expected to be or has been historically found in natural settings essentially undisturbed or minimally disturbed by human impacts, development, or discharges. This condition shall be determined by consistent sampling and reliable measures of selected indicator communities of flora and/or fauna and may be used in conjunction with other measures of water quality. Waters shall be of a sufficient quality to support a resident biological community as defined by metrics

derived based upon reference conditions. These narrative biological criteria shall apply to fresh water, wetlands, estuaries, and coral reefs and other marine conditions based upon their respective reference conditions and metrics.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0207 Zones of Mixing.

(a) Policy: Zone of mixing

Human activities may result in the practical need to discharge pollutants through point sources into the waters of the territory. And, because of technological, economic and other factors, it may not always be feasible to achieve an effluent quality that equals or exceeds the standards established herein at the point of discharge. Therefore, subject to the prohibitions, criteria and procedures set forth below, alternate water quality standards may be defined by the EQC in the immediate vicinity surrounding the point of discharge. The area within which the alternate standards apply shall be a zone of mixing. All applicable water quality standards shall be met at the boundary of any zone of mixing.

It is the policy of the EQC that zones of mixing shall only be granted upon a finding that no other practicable means of waste treatment and disposal are available. Further, it is the policy of the EQC that zones of mixing shall be limited to the smallest area possible.

(b) Criteria: Zone of Mixing

A zone of mixing can only be granted by the EQC if the application and the supporting information clearly shows that all of the following conditions and criteria have been met:

- (1) It is in the public interest that a zone of mixing be granted to begin or continue the function or operation associated with the discharge;
- (2) The proposed discharge does not substantially endanger human health or safety, or the environment;
- (3) Compliance with the existing water quality standards at the point of discharge would

produce serious economic hardships without equal or greater benefit to the public;

- (4) Alterations generated by a proposed discharge do not disrupt the marine ecology of the receiving waters outside the zone of mixing;
- (5) A zone of mixing shall not be granted for fresh surface waters, Nu'uuli Pala Lagoon, Fagatele Bay, that portion of Pago Pago Harbor described in §24.0205(e)(1)(C), or in those waters in Manu'a described in §24.0205(f)(2)(G);
- (6) The size of any zone of mixing granted for any toxic pollutant shall not exceed the dimensions and volume of the zone of initial dilution and in no event shall the concentration of a toxic pollutant exceed chronic toxic levels at the boundary of the zone of initial dilution (ZID). Except for limited portions of the ZID, acute toxic standards shall be achieved within the ZID;
- (7) The standards set forth in §24.0206(a)-(d) shall be met at the boundary of the zone of initial dilution;
- (8) Alternate standards may be established within a zone of mixing for those standards set forth at §§24.0206(h),(j),(l),(m),(o), and (p); provided that the standards shall be met at the boundary of the zone of mixing;
- (9) A zone of mixing shall not be granted if it would include the surface of the water body, any part of the shoreline, or any part of any barrier or fringing reef; and
- (10) Further, the following shall be considered by the EQC in determining whether to grant or deny a zone of mixing:
 - (A) Protected uses of the body of water;
 - (B) Existing ambient conditions of the receiving water;
 - (C) Character of the effluent;
 - (D) Adequacy of the design of the outfall and diffuser system to achieve the

desired dispersion and assimilation in the receiving waters; and

(E) Other pertinent policies, plans or territorial agencies.

(c) Procedures to Apply for Zone of Mixing

(1) The owner and/or operator of a point source of pollutants where the effluent quality of the discharge does not meet the applicable standards defined in §24.0206 at the point of discharge shall be in violation of these standards until such time as the EQC grants a zone of mixing upon receiving and acting upon an application for a zone of mixing from the discharger. At its discretion the EQC may grant extensions to discharges existing on the effective date of these standards, but in no event shall an existing discharge requiring a zone of mixing continue to discharge if a complete application for a zone of mixing has not been submitted to the EQC within 180 days of the effective date of these standards.

(2) Every application for a zone of mixing shall be accompanied by a complete and detailed description of:

(A) the nature of the discharge including, but not limited to, volume, effluent quality, discharge location and configuration, and treatment applied;

(B) existing ambient water quality conditions in the vicinity of the discharge;

(C) how present conditions compare to standards;

(D) proposed alternate water quality standards within the proposed zone of mixing;

(E) proposed dimensions and volume of the zone of mixing;

(F) a calculation of the dimensions and volume of the zone of initial dilution and the dilution ratio achieved at the

boundaries of the zone of initial dilution;

(G) the reasons why it is not practicable to achieve water quality standards for any specific parameter at the point of discharge or to eliminate the discharge and why the operation of the discharge is in the best interest of the territory; and

(H) such other information as the EQC prescribes.

(3) Each application for a zone of mixing shall be reviewed in light of descriptions, statements, plans, histories, and other supporting information as may be submitted in the application or upon the request of the EQC and the effect on the water quality standards established in §24.0206.

(4) A zone of mixing, or a renewal, may be granted upon the EQC's determination that the requirements of these standards have been met for the following time periods and conditions:

(A) If a zone of mixing is granted on the grounds that there is no technically and/or financially efficient means known or available for elimination or adequate prevention, control, or abatement of the discharge involved, it shall be only until the necessary means of prevention, control, or abatement becomes practicable and it shall be subject to the taking of substitute or alternative measures that the EQC may prescribe. No renewal of a zone of mixing granted under this section shall be allowed without a thorough review of known and available means of preventing, controlling or abating the discharge involved;

(B) The EQC may grant a zone of mixing for a period not exceeding 5 years, subject to be reopened if these water quality standards are revised during the 5-year period;

- (C) Every zone of mixing granted under this section may include, but not be limited to, applicant requirements to perform effluent and receiving water sampling and testing as specified by the EQC and to report the results to the EQC. A program of research to develop practicable alternatives to the methods of treatment or control in use by the applicant may be required as a condition of the granting of the zone of mixing; and
- (D) Upon application any zone of mixing granted pursuant to this section may be renewed periodically for periods not exceeding 5 years, provided, that:
- (i) the applicant for renewal has met all of the conditions specified in the previously prescribed zone of mixing;
 - (ii) no renewal shall be granted except upon application. Any such application shall be made at least 120 days prior to the expiration of the current zone of mixing;
 - (iii) upon timely application for renewal, the terms and conditions of the original zone of mixing shall remain in effect until such time as the EQC acts upon the application for renewal; and
 - (iv) if no timely application for renewal is made, the zone of mixing shall automatically expire.
- (5) The EQC, on its own motion or upon the application of any person, shall terminate a zone of mixing if, after a hearing, it is determined that:
- (A) the water quality outside the zone of mixing does not meet the standards applicable to that water as given in §24.0206;
 - (B) the zone of mixing granted has interfered with any protected uses of the water area; or
 - (C) any NPDES permit condition has not been met and the discharger has failed to take prudent action to bring the discharge into compliance.
- Such termination shall be made after a hearing held by the EQC in accordance with ASCA, Title 4, Chapter 10. Upon such termination, the standards of water quality applicable shall be those established in §24.0206.
- (6) The granting of a mixing zone shall be subject to approval by USEPA.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0208 Pollution Control

(a) General

Any private or public development which would constitute a source of pollution to the waters of American Samoa shall provide the degree of waste treatment and/or operational and management practices necessary to preserve the quality of these waters.

(b) Land Disturbing Activities

Soil particles resulting from erosion on land involved in earth work, such as the construction of public works, highways, subdivisions, private developments, and recreational, commercial, or industrial developments, or the cultivation and management of agricultural lands, shall be prevented from entering any waters of American Samoa by application of management practices and standards in accordance with the most recent version of “American Samoa Erosion and Sediment Control Field Guide” adopted by AS-EPA and implemented by the person(s) responsible. These practices include, but are not limited to:

- (1) Best management practices (BMPs) for cultivated agricultural lands. The responsible person(s) shall implement BMPs to assure removal of settleable solids

originating from the cultivated area. In so doing, the responsible person(s) shall:

- (A) Utilize guidelines established by AS-EPA and the erosion component of the Conservation Management System as defined in the Field Office Technical Guide of the US Department of Agriculture, the Natural Resources Conservation Service, and/or guidance from AS-EPA. In the alternative, the responsible person(s) may design and install a combination of management and physical practices to remove the settleable solids and associated pollutants in runoff delivered from the contributing area for storms up to and including a ten-year, 24-hour frequency.
 - (B) For cultivated areas in excess of one acre and/or within 100 feet of a surface water or such other areas as AS-EPA may specify, prepare and submit an erosion and sediment control plan to the AS-EPA for approval. The AS-EPA shall either approve, conditionally approve or disapprove the plan. Cultivation activities ongoing as of the effective date of these standards may not proceed for more than 90 days in the absence of an approved plan. No new activity may commence until such time as AS-EPA has approved the plan.
- (2) BMPs for construction sites. The responsible person(s) implementing BMPs at construction sites shall:
- (A) Assure that the annual total suspended solids loading from a construction site is no greater than the average annual loading prior to construction or after construction is complete and the site is permanently stabilized;
 - (B) Reduce annual average suspended solids loading by 80 percent based on total suspended solids loading from

storms less than or equal to the 2-year/24-hour storm;

- (C) For construction activities disturbing in excess of one acre or occurring within 100 feet of a surface water, ensure that the standards set forth in subdivisions (A) and (B) are met, or, in the alternative, prepare and submit a construction and postconstruction erosion and sediment control plan for approval by AS-EPA. For approval, the BMPs to be included in the plan must be those provided by the “Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters” (January 1993, USEPA OW) guidance received from AS-EPA or the Natural Resources Conservation Service, or other references, as approved by ASEPA. For construction activities disturbing in excess of one acre or within 100 feet of a surface water that are initiated after the effective date of these standards, the plan shall include measures to retain sediment on the site.

(c) On Site Disposal Systems

- (1) No person may site, construct, or operate an on site disposal system except in accordance with public health rules, building codes, water quality standards, and sewer use regulations of the Territory. Failure to do so shall constitute a violation of these standards.
- (2) Installation of on site disposal systems that reduce total nitrogen loading by 50 percent to ground water that is closely hydrologically connected to surface water will be required if conditions indicate that nitrogen limited surface waters may be adversely affected by excess nitrogen loading.

(d) Animal Waste Control

Improper waste disposal and contaminated runoff from confined animal facilities contribute nutrients, bacteria, viruses, other

microorganisms, and sediment to streams, near shore and ground waters that lead to eutrophication, fish kills, and unsafe drinking water. In order to prevent these impacts, owners of confined animal facilities shall:

- (1) Utilize animal waste control facilities that provide waste treatment, such as septic tanks and leach fields, waste storage ponds, waste storage structures, application of manure or runoff water to agricultural land, waste utilization, burial, or any other method determined to be environmentally acceptable by the Director of AS-EPA;
- (2) Locate such facilities and their waste treatment facilities at least 50 feet from any wetland, marine water body, or Class II fresh surface water except for the allowed siting of septic tanks and drain fields in §24.0205 (b)(1)(B)(v), §24.0205 (b)(2)(B)(v) and (vi), and §24.0205(d)(2)(D); and at least 100 ft. from any well head;
- (3) Control all waste such that it will not contaminate near shore waters, streams, or ground waters; and
- (4) Continuously operate and maintain animal waste control facilities to ensure effective treatment.

(e) Storm Water Control

To prevent negative impacts to receiving waters and ground waters as a result of disruption in natural drainage patterns caused by development, the following standards shall be required to control storm water for all new development projects and new or modified land uses in accordance with the most recent version of “AS-EPA Guidance Manual for Runoff Control”:

- (1) A storm water control plan shall be completed for any construction activity or temporary or permanent development determined by AS-EPA to have a potential significant impact on receiving water quality or ground water quantity or quality. Such activities include, but are not limited

to, confined animal facilities, construction project staging areas, highways, bridges, parking lots, structures, and facilities utilizing hazardous materials, pesticides, fertilizers or manure. The storm water control plan required by this section shall be submitted to AS-EPA and approved in writing prior to commencement of any construction activity for a new project and by the date specified by AS-EPA for existing land uses. The plan shall include the following:

- (A) An estimate of the volume of storm water to be controlled, an assessment of the potential impacts of the storm water to be addressed, the design of BMPs and/or storm water controls, including a location map for the controls at the site, and a full description of the designs for the storm water controls.
- (B) For nonstructural BMPs, a description of the management measures or methods to be used at the site to prevent the escape of pollutants to the receiving waters or ground waters. Nonstructural BMPs used in the plan shall be those contained in the “Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters” (January 1993, USEPA OW) or guidance from the AS-EPA, the Natural Resources Conservation Service, or other source as approved by AS-EPA.

- (2) For the planning, development, and maintenance of new, modified, and existing land uses, avoidance and prevention of water quality impacts is required. The methods to be utilized include, but are not limited to, BMPs such as site planning, proper use, storage, and disposal of hazardous materials, avoidance of sensitive areas, and proper preparation and maintenance of drainage structures, or others as required by AS-EPA

(f) Hydromodification

In order to prevent water quality degradation and preserve valuable in stream and riparian habitat, the following practices shall be required and/or implemented by ASEPA:

- (1) All projects involving hydromodification shall be evaluated to determine their impacts on the physical and chemical characteristics of surface waters as well as in stream and riparian habitat, using appropriate models and methodologies.
- (2) BMPs for use in the design and/or operation of new or existing hydromodification structures shall be identified and implemented by responsible persons. BMPs include, but are not limited to, protection of existing vegetation, minimization of loads on top of stream banks, hydraulic structures, check dam systems, grade control structures, vegetative cover, in stream sediment load control, soil bioengineering; proper stream bank and shoreline erosion control design, and use of setbacks, as provided in the (g) Guidance or other references approved by ASEPA.
- (3) ASEPA shall work with other ASG departments and the private sector to ensure the proper operation and maintenance of hydromodification structures.

(g) Hazardous Materials and Chemical Control

Notwithstanding any other rules in force pertaining to hazardous materials management, the following BMPs shall be implemented at facilities or construction sites where hazardous materials such as petroleum products, solvents, paints, pesticides, fertilizers, soil additives, and other chemicals in excess are stored or utilized so that contamination of streams, near shore waters, and ground waters is minimized or prevented:

- (1) Proper storage of hazardous materials. All hazardous materials and chemicals shall be stored within a covered shelter; an impervious berm with a capacity of 110 % of the largest container in the shelter shall be placed around the perimeter of the storage area; and appropriate construction

measures shall be taken to prevent the runoff of pollutants;

- (2) Proper labeling of chemicals and placement of warning signs in areas where pesticides are or have recently been applied;
 - (3) Proper disposal of hazardous chemicals or materials in conformance with AS-EPA guidelines and/or regulations promulgated by the EQC;
 - (4) Proper maintenance of vehicles, equipment, and machinery in confined areas specially designed to control runoff; and
 - (5) Proper application of fertilizers and manure using procedures recommended by the “Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters” (January 1993, USEPA OW) Natural Resources Conservation Service, or other source as approved by AS-EPA. Soil tests shall also be utilized to determine the specific nutrient needs at the site where such applications are performed in consultation with appropriate subject matter experts (e.g., Natural Resources Conservation Service).
- (h) Dredging (Dredge and Dredge Spoil)

Dredging and dredged spoil discharges generally result in short-term disruption and do not represent continuous discharge that will affect beneficial uses over a long-term. Other inwater, construction-related activities, such as discharge from the dewatering of excavations and shoreline stabilization projects, can also cause short-term suspension of sediments similar to that caused by dredge and fill discharges. Effect zones may therefore be granted for dredging activities, other in-water construction-related activities, and the discharge of dredged or fill material provided that:

- (1) all other requirements of this Part are met; and
- (2) the proposed activity satisfies the policy of water quality antidegradation found in §24.0202 of this document.

Dredging and discharge of dredged or fill material can adversely affect colonies of reef building organisms by burying them, by releasing contaminants such as hydrocarbons into the water column, by reducing light penetration through the water, and by increasing the level of suspended particulates. Coral organisms are extremely sensitive to even slight reductions in light penetration or increases in suspended particulates (i.e., turbidity). These adverse effects will cause a loss of productive colonies which in turn provide habitat for many species of highly specialized aquatic organisms.

Dredging and discharge of dredged or fill material can also adversely affect sea grass beds by smothering vegetation and benthic organisms, and may also create unsuitable conditions for their continued vigor by:

- (1) changing water circulation patterns;
- (2) releasing nutrients that increase undesirable algal populations;
- (3) releasing chemicals that adversely affect plants and animals;
- (4) increasing turbidity levels, thereby reducing light penetration and hence photosynthesis; and
- (5) changing the capacity of a vegetated shallow to stabilize bottom materials and decrease channel shoaling. Dredging and the discharge of dredged or fill materials may reduce the value of vegetated shallows as nesting, spawning, nursery, cover, and forage areas, as well as their value in protecting shorelines from erosion and wave actions. It may encourage the growth of nuisance vegetation.

In granting effect zones for dredging activities, the discharge of dredged or fill material, or other in-water, construction-related activities that cause the suspension of sediments in or near coral reef resources and sea grass beds, the EQC shall assure that any disruption to beneficial uses is kept

to an absolute minimum, and that all practicable measures are taken to prevent adverse impacts to resources of concern, taking into consideration the magnitude and duration of the proposed activity, and the proximity to resources of concern. This shall be satisfied by placing conditions within the applicable permit or water quality certification requiring the following:

- (1) The use and maintenance of Best Management Practices (BMPs) including such measures as "silt curtains", closed ("environmental") buckets, hydraulic dredges, or other methods as appropriate to control the drift and extent of suspended sediment plumes beyond the location of the dredge or fill activity;
- (2) Water quality monitoring requirements for turbidity and other pollutants of concern that may be identified or expected in the dredge spoil or fill material. Periodic aquatic ecosystem monitoring may also be required for the purpose of assessing the effects of the activity on resources of concern and determining the necessity of additional mitigative measures;
- (3) For activities which have the potential to adversely affect coral reproduction, a stoppage period of no less than 60 days, starting 5 days after the October full moon, shall be a condition of any permit or water quality certification. In determining whether an activity has the potential to affect coral spawning, the EQC shall consider all of the following: 1) the magnitude of the sediment plume generated by the proposed activity; 2) the most likely extent and direction(s) of drift of the sediment plume; 3) the type of sediment and its composition; and 4) the proximity of broadcast spawning coral species to the proposed activity and expected sediment plume;

- (4) A specified distance up-current and down-current from the permitted activity at which applicable water quality criteria must be met (i.e., an effect zone). Effect zones for dredge and fill activities shall be kept as small as practicable, and shall not exceed 300 feet downcurrent and 150 feet up-current. Down-current distance may be increased to 600 feet where typical currents can be shown to make the use of BMPs ineffective; and
- (5) Any additional protective measures, limitations, monitoring, or effect zone requirements that the EQC identifies as being necessary to protect resources of concern; and
- (6) Prior to commencing any dredging activity, authorization from AS-EPA must be received.

The EQC may require an applicant for water quality certification or permit for dredging, the discharge of dredged or fill material, or similar in-water, construction-related activities, to provide information necessary to support the development of monitoring plans, mitigation measures, or effect zone requirements, such as engineering designs, surveys of existing currents, water quality data, and baseline ecosystem and indicator species surveys.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0209 Water Quality Certifications

(a) Water Quality Certification Issuance

Water quality certifications may be issued by the EQC for any proposed activity that is found not to violate applicable water quality standards and Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended. A water quality certification is required by Section 401 of the Clean Water Act of any applicant for a federal license or permit to conduct any activity,

including, but not limited to, the construction or operation of facilities which may result in a discharge into navigable waters of the United States.

(b) Procedures to Apply for Water Quality Certification – Contents of application

An applicant for certification shall submit a complete description of the discharge involved in the activity for which certification is sought, with a request for certification signed by the applicant. Such description shall include the following:

- (1) The name and address of the applicant;
- (2) A description of the facility or activity, and of any discharge into territorial waters which may result from the conduct of any activity including, but not limited to, the construction or operation of the facility, including characteristics of the discharge, and the location or locations at which such discharge may enter territorial waters;
- (3) If applicable, a description of the function and operation of equipment or facilities to control discharges, including specification of the methods of control to be used;
- (4) The estimated date or dates on which the activity will begin and end, and the date or dates on which the discharge(s) will take place;
- (5) If applicable, a description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the control of the proposed discharges; and
- (6) The EQC may require the submission of additional information after a certification application has been filed. If a certification application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency. The EQC shall notify the

applicant, in writing, within sixty days of the submission of an application if an application is incomplete or otherwise deficient. A description of the type of additional information necessary to complete the application or correct the deficiency shall be included with such a written notice. Failure to provide additional information or to correct a deficiency shall be sufficient grounds for denial of certification. EQC must act on the application after receipt of a completed application;

(c) Water Quality Certification – Notice and Hearing

The EQC will provide the public with the opportunity to comment on the water quality certification and may, upon request or its own initiative, provide the opportunity for public hearing(s) to consider the issuance of water quality certification as specified in the Administrative Procedures Act (ASCA, Title 4, Chapter 10) and Environmental Quality Act (ASCA, Title 24, Chapter 1). The EQC shall inform the applicant, in writing, that such action has been taken. If, after considering the complete application, comments received during the public comment period, the record, and other information the EQC deems relevant, the EQC determines that applicable water quality standards will not be violated and the best practicable methods of control will be applied to a discharge which is the result of any activity, including but not limited to the construction and operation of facilities, then the EQC shall so certify.

(d) Contents of Water Quality Certification

- (1) The name and address of the applicant;
- (2) A statement that the EQC has examined the application made by the applicant and other information furnished to the licensing or permitting agency and bases its certification upon an evaluation of all such information

contained in such application which is relevant to water quality certification;

- (3) A statement that there is reasonable assurance that the activity will be conducted in a manner that will not violate water quality standards or the Clean Water Act;
- (4) A statement of any condition which the EQC deems necessary or desirable with respect to the discharge or the activity that will affect water quality; and
- (5) Such other information as the EQC may determine to be appropriate.

(e) Modification

The EQC may modify the certification prior to the issuance of the federal license or permit, after consideration of any additional information presented by the applicant, licensing or permitting agency or other government agencies or interested parties. The EQC shall provide the opportunity for public review and comment on any such modification.

(f) Water Quality Certification – Adoption of New or Revised Water Quality Standards

- (1) All water quality certifications issued by the EQC will include a clause indicating that the certification is subject to amendment or modification if new or revised water quality standards are adopted by the EQC.
- (2) Upon adoption or revision of water quality standards, the EQC will notify the licensing or permitting authority and request the licensing or permitting authority to amend or modify the license or permit to reflect the applicable water quality standards.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

24.0210 Enforcement, Compliance and Water Quality Monitoring

(a) Enforcement Authority

Enforcement of these standards shall be in accordance with the applicable provisions of the Environmental Quality Act, ASCA, Title 24, Chapter 1.

(b) Determination of Compliance With Ambient Standards

(1) Compliance with numeric water quality standards (§24.0206) shall be determined in accordance with the most recent version of “AS-EPA Implementation Guidance Manual for ASWQS Numeric Criteria”.

(2) In situations where the naturally occurring conditions result in exceedance of a standard, the ambient condition shall constitute the applicable standard.

(c) Analytical Methods

Unless otherwise approved by the EQC and US -EPA or stipulated in these standards, analysis performed to determine compliance with these standards shall be those approved by US EPA.

(d) Sanitary Survey Requirements

If a monitoring station consistently exceeds the geometric mean standard for E. coli or enterococcus, the EQC shall conduct, or require a discharger to conduct, a survey to determine the source of the contamination. When a sanitary survey identifies a controllable source of indicator organisms associated with a discharge of sewage, the EQC shall take action to control the source. Waste discharge requirements shall require the discharger to conduct sanitary surveys when so directed by the EQC. Such requirements shall contain provisions requiring the discharger to control any controllable discharges identified in a sanitary survey.

e) Compliance Schedules for National Pollution Discharge Elimination System (NPDES) Permits

The use of compliance schedules for water quality-based effluent limitations (WQBELs) in

National Pollutant Discharge Elimination System (NPDES) permits issued by the permitting authority is authorized by the EQC in accordance with the requirements under 40 CFR 122.47.

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019

Amendments: Rewording.

Appendix A

Ammonia Toxicity Standards for Fresh and Marine Waters

[SEE NEXT PAGE FOR APPENDIX A]

Water Quality Criteria for Ammonia in Freshwater (ACUTE)^{1,2}

	Temperature (C°)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
<u>6.5</u>	51	51	51	51	51	51	51	51	51	48	44	40	37	34	31	29	27
<u>6.6</u>	49	49	49	49	49	49	49	49	49	46	42	39	36	33	30	28	26
<u>6.7</u>	46	46	46	46	46	46	46	46	46	43	40	37	34	31	29	26	24
<u>6.8</u>	44	44	44	44	44	44	44	44	44	41	38	35	32	29	27	25	23
<u>6.9</u>	41	41	41	41	41	41	41	41	41	38	35	32	30	27	25	23	21
<u>7.0</u>	38	38	38	38	38	38	38	38	38	35	32	30	27	25	23	21	20
<u>7.1</u>	34	34	34	34	34	34	34	34	34	32	29	27	25	23	21	19	18
<u>7.2</u>	31	31	31	31	31	31	31	31	31	29	26	24	22	21	19	17	16
<u>7.3</u>	27	27	27	27	27	27	27	27	27	26	23	22	20	18	17	16	14
<u>7.4</u>	24	24	24	24	24	24	24	24	24	22	21	19	17	16	15	14	13
<u>7.5</u>	21	21	21	21	21	21	21	21	21	19	18	16	15	14	13	12	11
<u>7.6</u>	18	18	18	18	18	18	18	18	18	17	15	14	13	12	11	10	9.3
<u>7.7</u>	15	15	15	15	15	15	15	15	15	14	13	12	11	10	9.3	8.6	7.9
<u>7.8</u>	13	13	13	13	13	13	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6
<u>7.9</u>	11	11	11	11	11	11	11	11	11	9.9	9.1	8.4	7.7	7.1	6.5	6.0	5.5
<u>8.0</u>	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.2	7.5	6.9	6.4	5.9	5.4	5.0	4.6
<u>8.1</u>	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	6.8	6.2	5.7	5.3	4.9	4.5	4.1	3.8
<u>8.2</u>	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	5.6	5.1	4.7	4.4	4.0	3.7	3.4	3.1
<u>8.3</u>	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.6	4.2	3.9	3.6	3.3	3.0	2.8	2.6
<u>8.4</u>	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	3.8	3.4	3.2	3.0	2.7	2.5	2.3	2.1
<u>8.5</u>	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.1	2.9	2.6	2.4	2.2	2.1	1.9	1.8
<u>8.6</u>	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.6	2.4	2.2	2.0	1.9	1.7	1.6	1.4
<u>8.7</u>	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2.0	1.8	1.7	1.5	1.4	1.3	1.2
<u>8.8</u>	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0
<u>8.9</u>	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.92	0.85
<u>9.0</u>	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1.0	0.93	0.85	0.78	0.72

¹ Source: Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater 2013. EPA-822-R-13-001

² Units: Total Ammonia Nitrogen (TAN). To convert these units see source document

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Water Quality Criteria for Ammonia in Freshwater (CHRONIC)^{1,2}

pH	Temperature (C°)																
	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
<u>6.5</u>	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.0	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
<u>6.6</u>	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	6.9	6.5	6.1	5.7	5.4	5.0	4.7	4.4	4.1
<u>6.7</u>	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	6.8	6.4	6.0	5.6	5.3	4.9	4.6	4.3	4.1
<u>6.8</u>	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.6	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4.0
<u>6.9</u>	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.5	6.1	5.7	5.3	5.0	4.7	4.4	4.1	3.9
<u>7.0</u>	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4.0	3.7
<u>7.1</u>	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6.0	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
<u>7.2</u>	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.7	5.3	5.0	4.7	4.4	4.1	3.9	3.6	3.4
<u>7.3</u>	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5.0	4.7	4.4	4.1	3.9	3.6	3.4	3.2
<u>7.4</u>	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5.0	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3.0
<u>7.5</u>	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
<u>7.6</u>	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.2	3.9	3.7	3.5	3.2	3.0	2.9	2.7	2.5
<u>7.7</u>	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
<u>7.8</u>	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.4	3.2	3.0	2.8	2.6	2.4	2.3	2.1	2.0
<u>7.9</u>	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.0	2.8	2.6	2.4	2.3	2.1	2.0	1.9	1.8
<u>8.0</u>	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.4	2.3	2.1	2.0	1.9	1.7	1.6	1.5
<u>8.1</u>	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3
<u>8.2</u>	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
<u>8.3</u>	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0	0.96
<u>8.4</u>	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1.1	0.99	0.93	0.87	0.81
<u>8.5</u>	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1.0	0.95	0.89	0.83	0.78	0.73	0.69
<u>8.6</u>	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	0.97	0.91	0.85	0.80	0.75	0.70	0.66	0.62	0.58
<u>8.7</u>	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.82	0.77	0.72	0.68	0.64	0.60	0.56	0.52	0.49
<u>8.8</u>	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.70	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
<u>8.9</u>	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.60	0.56	0.52	0.49	0.46	0.43	0.41	0.38	0.36
<u>9.0</u>	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.51	0.48	0.45	0.42	0.40	0.37	0.35	0.33	0.31

¹ Source: Aquatic Life Ambient Water Quality Criteria for Ammonia – Freshwater 2013. EPA-822-R-13-001

² Units: Total Ammonia Nitrogen (TAN). To convert these units see source document

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pH	Temperature (°C)							
	0	5	10	15	20	25	30	35
	Salinity = 10g/kg							
7.0	270	191	131	92	62	44	29	21
7.2	175	121	83	58	40	27	19	13
7.4	110	77	52	35	25	17	12	8.3
7.6	69	48	33	23	16	11	7.7	5.6
7.8	44	31	21	15	10	7.1	5.0	3.5
8.0	27	19	13	9.4	6.4	4.6	3.1	2.3
8.2	18	12	8.5	5.8	4.2	2.9	2.1	1.5
8.4	11	7.9	5.4	3.7	2.7	1.9	1.4	1.0
8.6	7.3	5.0	3.5	2.5	1.8	1.3	0.98	0.75
8.8	4.6	3.3	2.3	1.7	1.2	0.92	0.71	0.56
9.0	2.9	2.1	1.5	1.1	0.85	0.67	0.52	0.44

pH	Salinity = 20g/kg							
	7.0	291	200	137	96	64	44	31
7.2	183	125	87	60	42	29	20	14
7.4	116	79	54	37	27	18	12	8.7
7.6	73	50	35	23	17	11	7.9	5.6
7.8	46	31	23	15	11	7.5	5.2	3.5
8.0	29	20	14	9.8	6.7	4.8	3.3	2.3
8.2	19	13	8.9	6.2	4.4	3.1	2.1	1.6
8.4	12	8.1	5.6	4.0	2.9	2.0	1.5	1.1
8.6	7.5	5.2	3.7	2.7	1.9	1.4	1.0	0.77
8.8	4.8	3.3	2.5	1.7	1.3	0.94	0.73	0.56
9.0	3.1	2.3	1.6	1.2	0.87	0.69	0.54	0.44

pH	Salinity = 30g/kg							
	7.0	312	208	148	102	71	48	33
7.2	196	135	94	64	44	31	21	15
7.4	125	85	58	40	27	19	13	9.4
7.6	79	54	37	25	21	12	8.5	6.0
7.8	50	33	23	16	11	7.9	5.4	3.7
8.0	31	21	15	10	7.3	5.0	3.5	2.5
8.2	20	14	9.6	6.7	4.6	3.3	2.3	1.7
8.4	12.7	8.7	6.0	4.2	2.9	2.1	1.6	1.1
8.6	8.1	5.6	4.0	2.7	2.0	1.4	1.1	0.81
8.8	5.2	3.5	2.5	1.8	1.3	1.0	0.75	0.58
9.0	3.3	2.3	1.7	1.2	0.94	0.71	0.56	0.46

¹Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA 440/5-88-004, April 1989

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Water Quality Criteria for Saltwater Aquatic Life Based on Total Ammonia mg/L

Criteria Continuous Concentrations

pH	Temperature (°C)							
	0	5	10	15	20	25	30	35
	Salinity = 10g/kg							
7.0	41	29	20	14	9.4	6.6	4.4	3.1
7.2	26	18	12	8.7	5.9	4.1	2.8	2.0
7.4	17	12	7.8	5.3	3.7	2.6	1.8	1.2
7.6	10	7.2	5.0	3.4	2.4	1.7	1.2	0.84
7.8	6.6	4.7	3.1	2.2	1.5	1.1	0.75	0.53
8.0	4.1	2.9	2.0	1.40	0.97	0.69	0.47	0.34
8.2	2.7	1.8	1.3	0.87	0.62	0.44	0.31	0.23
8.4	1.7	1.2	0.81	0.56	0.41	0.29	0.21	0.16
8.6	1.1	0.75	0.53	0.37	0.27	0.20	0.15	0.11
8.8	0.69	0.50	0.34	0.25	0.18	0.14	0.11	0.08
9.0	0.44	0.31	0.23	0.17	0.13	0.10	0.08	0.07

pH	Salinity = 20g/kg							
	7.0	44	30	21	14	9.7	6.6	4.7
7.2	27	19	13	9.0	6.2	4.4	3.0	2.1
7.4	18	12	8.1	5.6	4.1	2.7	1.9	1.3
7.6	11	7.5	5.3	3.4	2.5	1.7	1.2	0.84
7.8	6.9	4.7	3.4	2.3	1.6	1.1	0.78	0.53
8.0	4.4	3.0	2.1	1.5	1.0	0.72	0.50	0.34
8.2	2.8	1.9	1.3	0.94	0.66	0.47	0.31	0.24
8.4	1.8	1.2	0.84	0.59	0.44	0.30	0.22	0.16
8.6	1.1	0.78	0.56	0.41	0.28	0.20	0.15	0.12
8.8	0.72	0.50	0.37	0.26	0.19	0.14	0.11	0.08
9.0	0.47	0.34	0.24	0.18	0.13	0.10	0.08	0.07

pH	Salinity = 30g/kg							
	7.0	47	31	22	15	11	7.2	5.0
7.2	29	20	14	9.7	6.6	4.7	3.1	2.2
7.4	19	13	8.7	5.9	4.1	2.9	2.0	1.4
7.6	12	8.1	5.6	3.7	3.1	1.8	1.3	0.90
7.8	7.5	5.0	3.4	2.4	1.7	1.2	0.81	0.56
8.0	4.7	3.1	2.2	1.6	1.1	0.75	0.53	0.37
8.2	3.0	2.1	1.4	1.0	0.69	0.50	0.34	0.25
8.4	1.9	1.3	0.90	0.62	0.44	0.31	0.23	0.17
8.6	1.2	0.84	0.59	0.41	0.30	0.22	0.16	0.12
8.8	0.78	0.53	0.37	0.27	0.20	0.15	0.11	0.09
9.0	0.50	0.34	0.26	0.19	0.14	0.11	0.08	0.07

¹Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA 440/5-88-004, April 1989

History: Rule 6-05, eff 2005; Rule 001-2019, eff Mar 2019
 Amendments: Rewording, Renumbering

TITLE 24 – CHAPTER 03 – QUARANTINE OF PETS AND AGRICULTURAL PRODUCTS AND ANIMALS

Sections

- 24.0301 Definitions.
- 24.0305 Compliance with animal rules required.
- 24.0306 Domestic animal import permit.
- 24.0307 Ruminants, swine, dogs and cats, poultry, and meat.
- 24.0308 Cattle test certificates required.
- 24.0309 Exemption for Western Samoa.
- 24.0310 Presentation of papers at entry.
- 24.0311 Inspection of animals at port of entry.
- 24.0312 Articles accompanying animals.
- 24.0313 Animals traveling through.
- 24.0314 Importation of animals by aircraft.
- 24.0315 Nondomestic animals-Prior permission.
- 24.0316 Department of agriculture animal importation.
- 24.0317 Dog and cat importation prohibited-Exceptions.
- 24.0318 Miscellaneous pet importation prohibited.
- 24.0319 Keeping on aircraft and vessels.
- 24.0320 Domestic animal importation.
- 24.0325 Compliance with plant, fruit, and vegetable rules required.
- 24.0326 Emits and vegetables-Fruit fly and citrus disease restrictions.
- 24.0327 Prohibited plants, plant parts, and seeds,
- 24.0328 Permit for plant material importation
- 24.0329 Certification of plants and materials.
- 24.0330 Examination at entry of plants, parts, and products.
- 24.0331 Department of agriculture importation.
- 24.0332 Emergency quarantine rules.
- 24.0335 Refuse disposal by vessels and aircraft.
- 24.0336 Ratguards on vessels.
- 24.0337 Aircraft spraying.
- 24.0338 Packing material prohibited-Exceptions.
- 24.0339 Feed and materials-Prohibited when-Certification.
- 24.0340 Feed and materials-Approved treatment required when.

24.0301 Definitions.

Whenever in this chapter, except 24.0319 through 24.0322, the following words, names, or terms are used they shall be construed, respectively, to mean as set out in this section:

- (a) “Cattle” means animals of the bovine species.
- (b) “Domestic animal” means cattle, sheep, goats, other ruminants, swine, horses, asses, mules, dogs, and poultry.
- (c) “Fresh fruits and vegetables” means the edible, more or less succulent portion of food plants in the raw or unprocessed state, such as oranges, grapefruit, tomatoes, peppers, lettuce, etc.
- (d) “Packing materials” means unprocessed material of plant origin used for packing, such as hay and straw, and leaves of various plants such., as banana and breadfruit.
- (e) “Plant pest” means any living stage of the numerous small invertebrate animals belonging to the phylum Arthropoda, any form of elongated invertebrate animals lacking appendages, commonly referred to as worms, any form of viruses, or any form of similar or allied organisms, which can directly or indirectly injure or cause disease in plants or parts thereof.
- (f) “Plants or portions of plants” means leaves, twigs, or other portions of plants or plant litter or rubbish as distinguished from clean fruits and vegetables.
- (g) “Poultry” means chickens, ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl, of all ages, including eggs for hatching.
- (h) “Ruminants” means animals which chew the cud, such as cattle, buffaloes, sheep, and goat.
- (i) “Seeds” means the mature ovular bodies produced by flowering plants containing embryos capable of developing in to new plants by germination.
- (j) “Swine” means the domestic pig only.
- (k) “Treatment” means fumigation or any other process involving the application of a gas, dry or

moist heat, chemicals, low temperature, etc., excision of infected parts, or any other processing of plants or parts of plants including seeds, that is designed to eliminate or control any infestation or infection by a plant pest or animal pest.

History: Ex. Ord. 1. eff Jan 55, Plant and Animal Quar. Regs. Part, 1.

II. ANIMALS

24.0305 Compliance with animal rules required.

No person, firm, or corporation shall import or bring into American Samoa any animals, domestic or otherwise, except in accordance with the provisions of this chapter: nor shall any animals be handled or moved after physical entry into American Samoa and before final release from quarantine or any other form of governmental restriction or detention except in compliance with this chapter.

History: Ex. Ord. 1. eff Jan 55. Plant and Animals Quar. Regs. Part 2 § 1.

24.0306 Domestic animal import permit.

For domestic animals of all kinds intended for importation from any part of the world, the importer shall first obtain a permit from the department of agriculture, which shall be presented to the chief quarantine officer or his representative at the port of entry at the time of importation. Animals will not be eligible for entry if shipped from any foreign port other than that designated in the permit.

The import permit fee for all domestic animals shall be \$2 per permit.

History: Ex. Ord. 1. eff Jan 55. Plant and Animal Quar. Regs. Part 2 § 2: and Rule 6-84. eff 1 May. 84. (part).

24.0307 Ruminants, swine, dogs and cats, poultry, and meat.

- (a) No ruminants or swine or fresh, chilled or frozen beef, veal, mutton, lamb, or pork may be imported if known to exist, and no permits will be issued for such importation.
- (b) All ruminants and swine offered for importation from any part of the world, except as provided in 24.0309 shall be accompanied by a certificate of

a salaried veterinary officer or other competent authority of the government of the place of origin, stating that such animals have been kept in that place at least 60 days immediately preceding the date of movement therefrom and that the country, during such period, has been entirely free from foot-and-mouth disease, rinderpest, contagious pleuropneumonia, and surra; provided however that in the case of sheep, goats, and swine, the certificate, insofar as it relates to contagious pleuropneumonia, may specify freedom from such disease of the district of origin only. For domestic swine, the certificate shall also show that for 60 days immediately preceding the date of movement from the premises or origin no erysipelas has existed on the premises of origin or on adjoining premises.

- (c) All poultry and poultry products, except as provided in 24.0309, offered for importation from any part of the world, shall be accompanied by a certificate of a salaried veterinary officer of the government of the place of origin stating that such poultry and their flock or flocks of origin were inspected on the premises of origin immediately before the date of movement from such place and that they were then found to be free of evidence of pullorum disease and other communicable disease, and that as far as it has been possible to determine, no case of European fowl pest (fowl plague) or Newcastle disease (avian pneumoencephalitis); occurred in the locality or localities where the poultry were kept during such period. All eggs for hatching offered for importation from any part of the world shall be accompanied by a certificate of a salaried veterinary officer or other competent authority of the government of the country of origin stating that flock or flocks of origin were found upon inspection to be free from evidence of pullorum disease (bacillary white diarrhea) and other communicable disease and that as far as it has been able to determine such flock or flocks were not exposed to any such disease common to poultry during the preceding 60 days.
- (d) All dogs and cats offered for importation from any part of the world, except as provided in 24.0306, shall be accompanied by a satisfactory

certificate of a salaried veterinary officer or other competent authority of the government of the place of origin stating that the animal has been given a prophylactic dose of antirabies vaccine no later than 30 days prior to date of arrival at the port of entry.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Qual. Regs. Part 2 § 3.

Prior History: Water Quality Standards, eff Jul 73.

24.0308 Cattle test certificates required.

Except as provided in 24.0306 all cattle offered for importation from any part of the world shall be accompanied by a satisfactory certificate of a salaried veterinary officer or other competent authority of the government of the place of origin stating that the animals have been tested for tuberculosis and brucellosis, with negative results within 30 days of the date of their exportation. The certificate shall give the dates and place of testing, names of the consignor and consignee, and a description of the cattle with breed, ages, and markings.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 4.

24.0309 Exemption for Western Samoa.

The director of agriculture may at his discretion waive the requirements of 24.0307 and 24.0308 for cattle, swine, poultry, cats, and dogs offered for importation from Western Samoa; provided, however, that such cattle; swine, poultry, cats, and dogs originated in Western Samoa and have not been in close contact with animals imported from other parts of the world without quarantine precautions.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 5.

24.0310 Presentation of papers at entry.

The certificates and affidavits required by this chapter shall be presented by the master of the vessel or his agent to the chief customs officer at that port upon arrival of the animals at the port of entry.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 6.

24.0311 Inspection of animals at port of entry.

All animals offered for importation from any part of the world shall be inspected at the port of entry and such animals found to be free from disease, and not to

have been exposed to contagious disease, will be admitted subject to the other provisions of this chapter. Animals found to be affected with a contagious disease or to have been exposed thereto shall be refused entry and unless returned to the country of origin, shall be destroyed. Such portions of the transporting vessel and of its cargo as have been exposed to those animals or their emanations shall be disinfected in such manner as may be considered necessary by the inspector in charge at the port of entry before the cargo is allowed to land.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 7.

24.0312 Articles accompanying animals.

No litter or manure, fodder or other ailment, nor any equipment such as boxes, buckets, ropes, chains, blankets, or other things used on or about animals governed by this chapter shall be landed from any vessel except under such restrictions as the inspector in charge at the port of entry directs.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 8.

24.0313 Animals traveling through.

Masters of vessels transporting animals not intended for importation into American Samoa shall comply with all restrictions and requirements deemed necessary by the inspector in charge at the port of entry to prevent entry of such animals into American Samoa.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 9.

24.0314 Importation of animals by aircraft.

No animals, either domestic or otherwise, shall be imported or brought into American Samoa by airplane, except that they may be imported by that means when the importer has received prior permission in writing from the Governor to do so and only when the importer complies with all other requirements.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § 10.

24.0315 Nondomestic animals-Prior permission.

Animals other than domestic may be imported or brought into American Samoa only when the importer

has received prior permission in writing from the Governor and when the importer complies with any special rules that may be imposed.

History: Ex. Ord, eff Jan 55, Plant and Animal Quar. Part 2 § 11.

24.0316 Department of agriculture animal importation.

Nothing in this chapter shall be construed to prevent the department of agriculture from making importation of animals from any part of the world for breeding or other purposes, provided that suitable and adequate quarantine-safeguards are maintained.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 2 § t2.

24.0317 Dog and cat importation prohibited-Exceptions.

Importation of dogs or cats into American Samoa is strictly prohibited; provided, however, that:

- (1) importation of dogs or cats into American Samoa is permitted from the following rabies free areas: Hawaii, New Zealand, and Australia, subject to terms and conditions from time to time established by the department of agriculture in response to changing local and foreign problems of disease control ;
- (2) importation of domestic dogs and cats into American Samoa is also permitted from the continental United States, the Territory of Guam, and the Pacific Island Trust Territories subject to terms and conditions from time to time established by the department of agriculture in response to changing local and foreign problems of disease control. Included therewith, with regard to dogs or cats from the continental United States, Guam, or Trust Territories, is mandatory quarantine in the state of Hawaii for a period to be determined by the department of agriculture;
- (3) importation of domestic dogs and cats into American Samoa from Western Samoa shall be entirely subject to the terms and conditions of entry then in existence; the director of agriculture at any time is empowered to entirely prohibit entry of dogs or cats from Western

Samoa or to allow entry upon such conditions as he then sees fit;

- (4) the director of agriculture shall, due to the unique and delicate nature of disease control on a small island, propagate from time to time and as he sees fit, terms and conditions of entry into American Samoa of domestic dogs and cats. The director shall at all times make available to the public a copy of this section and the terms and conditions of entry aforementioned; furthermore copies of both shall be provided to the department of manpower resources as well as to all employers hiring off-island personnel at their request, as well as to all air carriers doing business in the territory;
- (5) compliance with the provisions of this section and the terms and conditions of entry shall be the sole responsibility of the dog or cat owner. Any dog or cat arriving in American Samoa without prior, complete compliance with the terms and conditions of entry then in existence shall be subject to immediate return to its place of origin at the owner’s expense, or, in the alternative, if the owner is unavailable or unable or unwilling to bear the cost of returning the dog or cat to its place of origin, shall be immediately destroyed.

History: Rule 2-78, eff 4 Apr 78, § 3 (b) (1); and Rule 8-78, eff 21 Sep 78, § 3.

24.0318 Miscellaneous pet importation prohibited.

- (a) miscellaneous pets such as lizards, snakes, turtles, frogs, tropical fish, parrots, cage birds, monkey, hamsters, rabbits, and similar animals which are regarded as pets are prohibited from being imported into American Samoa;
- (b) the director of agriculture or his authorized representative will determine whether an animal falls under the miscellaneous pets category if the animal is not enumerated in subsection (a) of this section.

History: Rule 2-78, eff 4 Apr 78, § 3 (b) (2), (3).

24.0319 Keeping on aircraft and vessels.

It is illegal to maintain any animal or bird aboard any vessel or aircraft in American Samoa for more than 48 hours. Animals or birds must be either destroyed

under the supervision of the department of agriculture, shipped off the islands on the first available flight at the owner’s expense, or the vessel or aircraft must leave American Samoa after the 48-hour period. During the time the vessel or aircraft is in port, all animals or birds must be kept under strict quarantine aboard the vessel or aircraft. However, if a bond is posted by the owner for the animal and this is approved by the department of agriculture, then the animal may be maintained in the vessel or aircraft. The director of agriculture or his authorized representative will determine the bond on any animal. If the animal is found off of the vessel or aircraft, it may be destroyed by the department of agriculture and the bond forfeited.

History: Rule 2-78, eff 4 Apr 78, § 3 (b) (4).

24.0320 Domestic animal importation.

All domestic animals, including ruminants (cattle, buffalo, sheep, and goats), horses, mules and asses, swine, and domestic poultry (chickens, ducks, geese, turkeys, pigeons, doves, quail, etc.) may be imported into American Samoa subject to department of agriculture restrictions and health certification.

History: Rule 2-78, eff 4 Apr 78. § 3 (b) (5).

III. PLANTS

24.0325 Compliance with plant, fruit, and vegetable rules required.

No person, firm, or corporation shall import or offer for entry into American Samoa any plants, plant materials, fruits, or vegetables, or plant products except in accordance with the provisions of this chapter, nor shall any of the above be handled or moved after physical entry into American Samoa before final release from quarantine or other form of governmental restriction or detention except in compliance with this chapter.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 3 § 1.

24.0326 Emits and vegetables-Fruit fly and citrus disease restrictions.

(a) The importation of fresh fruits, susceptible vegetables, and seeds covered with pulp, is prohibited from areas where the oriental fruit fly (*Dacus dorsalis*) and the Mediterranean fruit fly (*Ceratitis copitata*) or other injurious fruit fly

species are known to occur. Such fruits and vegetables may however, be entered if accompanied by certification of competent authority in the country of origin that it has been subject to an approved treatment at point of origin and subsequently protected from reinfestation until exportation has been effected.

(b) The importation of citrus fruits is prohibited from areas where the organism causing citrus canker, cancrasis “B”, and sweet orange scab are known to occur, and shall be permitted entry only when accompanied by a certificate of competent authority in the country of origin stating that it originated in an area free from the aforesaid diseases.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 3 § 2.

24.0327 Prohibited plants, plant parts, and seeds.

Except as indicated, the following plants, plant parts, and seeds are prohibited entry into American Samoa:

- (a) All coconut plants or parts thereof, except that nuts may be permitted entry when fumigated with methyl bromide at the port of origin;
- (b) All rice plants and parts thereof, except milled rice for human consumption;
- (c) All pineapple and related plants except within the area embraced by the South Pacific Commission;
- (d) All citrus and related plants or parts thereof for propagation except from areas known to be free from citrus canker or quick decline (*Tristeza*);
- (e) All rubber plants and parts thereof from areas where the American leaf disease (*Dothidella ulei*) occurs, and from other areas, only in the form of seed or budwood;
- (f) All cacao plants and parts thereof from areas where witch’s broom (*Marasmiium fernicous*) or swollen shoot disease occur;
- (g) All plants of sugarcane and other species of Saceharurn or parts thereof;
- (h) All plants of banana and other *Musa* species or parts thereof, from areas where panacea disease

(Fusarium oxisporum var. cubense) or bunchy top virus disease occur;

- (i) All coffee plants and parts thereof from areas where the coffee bean borer (Stephenoderes coffee) exists, or where the blockwood disease of robusta coffee (Thielaviopsis neocaledonise) is known to occur.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 3 § 3.

24.0328 Permit for plant material importation

Any person lirin or corporation wishing to offer for entry into American Samoa any plant material shall first obtain a permit from the department of agriculture for their importation. This permit shall detail the amount and kind of plant, point of origin method of transportation and type of treatment required, if any at point of origin. No plants or plant material shall be permitted entry if obtained from other than the indicated point of origin.

The schedule of fees for permits under this section shall be as follows:

- (1) Import permits for plants and plant products:
 - (A) Individual permits- \$3 permit;
 - (B) Block permits- \$25 per year;
 - (C) For any access items not included in the import port, there shall be levied a fine of \$5 per item upon arrival.
- (2) Phytosanitary certificate-\$1 per permit.

History: Ex. Ord. 1, eff Jan 55. Plant and Animal Quar. Regs. Part 3 § 4; and Rule 6-84. eff I May 84. (part).

24.0329 Certification of plants and materials.

All plants and plant materials offered for entry shall be accompanied by a certificate issued by competent authority of the country of origin, listing the contents of the shipment, their locality and type of treatment, if any, and stating that the plant material covered by certificate was examined and found, to the best of his knowledge, apparently free from injurious pests and diseases. The original of this certificate shall be presented to the inspector of the department of agriculture upon or before the arrival of the shipment at the port of entry.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 3 § 5.

24.0330 Examination at entry of plants, parts, and products.

All plants, plant parts, or plant products offered for entry into American Samoa shall be subject to examination by an authorized inspector. If such a consignment should be found to be infested with an injurious insect or disease, he may refuse entry to all or a portion of the consignment. Those plants, plant parts, or products refused entry shall be subject to disposal under direction of the director, department of agriculture, by return to the country of origin or confiscation and destruction, or admittance under such treatment and quarantine safeguards as he deems necessary. All costs incident to such disposition, other than the services of the inspector, shall be borne by the importer.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 3 § 6.

24.0331 Department of agriculture importation.

Nothing in this article shall be construed to prevent the department of agriculture from importing plants, plant materials, and products from any part of the world for experimental purposes under such quarantine safeguards as the director of the department of agriculture prescribes.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 3 § 7.

24.0332 Emergency quarantine rules.

The director, department of agriculture, shall have the authority, subject to later confirmation by the Governor, to impose emergency quarantine rules in situations not covered by this chapter and when the situation in his opinion, so warrants.

History: Ex. Ord. 1, eff Jan 55. Plant and Animal Quar. Regs. Part 3 § 8.

LV. SPECIAL RULES

24.0335 Refuse disposal by vessels and aircraft.

- (a) Vessels and aircraft entering American Samoa from foreign ports are prohibited from dumping garbage, trash and other refuse into the harbors and protected waters of the islands, and from

putting such garbage ashore for disposition except under the following conditions:

- (1) The presence of an agricultural quarantine inspector to supervise the loading and unloading of any and all garbage trash and other refuse containers, fumigation of commodities and certification of commodities to export shall be required.
- (2) If adequately screened and protected incinerators are available ashore, garbage and trash from vessels entering from foreign ports may be landed for destruction by burning under the supervision of agricultural quarantine inspectors or other appropriate port authorities. Otherwise, garbage and trash shall be accumulated aboard the vessel in covered containers for the duration of the stay of the vessel, and subsequently dumped at sea upon resumption of the voyage.
- (3) All garbage and trash from land-based aircraft entering American Samoa from a foreign area shall be placed in an insect-proof container while on board the plane, and, under the supervision of agricultural quarantine inspectors or other appropriate port authorities, be taken to an adequately screened and protected incinerator where it shall be destroyed by burning.
- (4) There shall be a fee of \$7.50 (per inspector) per hour assessed against each vessel and aircraft that shall enter American Samoa and do any of the acts mentioned in this regulation.

(b) Garbage containing animal and plant products:

- (1) All garbage containing animal and plant products from vessels or aircraft must be held on board the vessel or aircraft while in port. In special circumstances and under the supervision of an agriculture quarantine inspector, the garbage may be placed inside an insect-proof container and unloaded and incinerated or sterilized. The director of agriculture or his authorized representative may determine what are special circumstances. The costs of transporting

incinerating and sterilizing the garbage, which shall be \$7.50 (per inspector) per hour, will be charged to the vessel or aircraft.

- (2) All galley garbage from vessels and aircraft can be considered as containing animal and plant products. This rule shall be strictly enforced on all vessels or aircraft arriving in American Samoa.
- (3) “Garbage” means all waste material derived in whole or in part from fruits, vegetables, meats, or other plant or animal (including poultry) material, and other refuse of any character whatsoever that has been associated with any such material on board any means of conveyance, and including food scraps, table refuse galley refuse, food wrappers or packaging materials, and other waste material from stores, food preparation areas, passengers or crews’ quarters, dining rooms, or any other areas on vessels, aircraft, or other means of conveyance.

History: Ex. Ord. 1. eff Jan 55. Plant and Animal Quar. Regs., Part 4 § 1: Rule 2-78. eff 4 Apr 78. § 3(a); Rule 6-84. eff 1 May 84. (part).

24.0336 Ratguards on vessels.

All vessels entering American Samoa from foreign ports shall place adequate ratguards on all lines, cables, or hawsers which lead ashore to prevent the entry of ratborne diseases.

History: Ex. Ord. 1. eff Jan 55, Plant and Animal Quar. Regs. Part 4 § 2.

24.0337 Aircraft spraying.

All aircraft entering American Samoa from a foreign area shall, 30 minutes prior to landing, treat all internal passenger and cargo spaces for insects with an aerosol spray formula approved by the U. S. Public Health Service.

History: Ex. Ord. 1, eff Jan 55, Plant and Animal Quar. Regs. Part 4 § 3.

**24.0338 Packing material prohibited-
Exceptions.**

All packing materials are prohibited entry into American Samoa except as follows:

- (a) When such materials have been treated or manufactured so as to exclude the possibility of harboring injurious pests and diseases:
- (b) When the unopened cases containing packing materials are first subjected to an approved precautionary treatment to kill insects and their eggs. Such cases must be opened in the Customs House, the packing materials removed and destroyed by burning at which time the consignment may be released from quarantine by the customs officer.

History: Ex. Ord. 1, eff Jan 55. Plants and Animal Quar. Regs., Part 4 § 4.

24.0339 Feed and materials-Prohibited when-Certification.

The importation of any straw, fodder, or chaff for animal feeding is prohibited from any area from which ruminants, swine, equines, and poultry are also prohibited entry. Importation of feeds and feed materials from all other areas shall be admitted only when accompanied by certification by competent authority of the country of origin that the area where produced is free from cattle ticks and infectious diseases of livestock.

History: Ex. Ord. 1, eff Jan 55. Plant and Animal Quar. Regs. Part 4 § 5.

24.0340 Feed and materials-Approved treatment required when.

All hay, straw, fodder, and other material for animal or poultry feed shall be subject to fumigation or other approved treatment at the expense of the consignee at the port of entry when, in the opinion of the director of agriculture, it is necessary to prevent entry of injurious or undesirable insect pests.

History: Ex. Ord. 1, eff Jan 55, Plants and Animal Quar. Regs. Part 4 § 6.

TITLE 24 – CHAPTER 04 – GIANT AFRICAN SNAIL

Sections:

- 24.0401 Authority.
- 24.0402 Finding of public health nuisance.
- 24.0403 Purpose.
- 24.0404 Moving materials to and from infested areas.

- 24.0405 Violation-Penalty.
- 24.0406 Abatement and removal.
- 24.0407 Appendix A-Giant African snail-infested areas.

Prior History: Emergency Rule 6-80, eff 5 May 80.

24.0401 Authority.

The rule codified in this chapter is adopted under the authority of 24.0102 (1) A.S.C.A.

History: Rule 19-80, eff 1 Sep 80, § 1.

24.0402 Finding of public health nuisance.

It is specifically found that the giant African snail, in view of increasing numbers and the numerous infested areas listed in Appendix A to this chapter, is harmful to agricultural products, food items, and water supplies and thereby endangers health and contaminates the environment, and constitutes a public health nuisance as defined in 25.0101 (19) A.S.C.A.

History: Rule 19-80, eff 1 Sep 80, § 2.

24.0403 Purpose.

The purpose of this chapter is to control the spread of the giant African snail from the infested areas listed in Appendix A to this chapter to uninfested areas in American Samoa, and to facilitate the abatement and removal of the snail from these areas.

History: Rule 19-80, eff 1 Sep 80, § 3.

24.0404 Moving materials to and from infested areas.

- (a) No person shall move by any means whatsoever soil, rocks, lumber, pipes, cinders, or any other material to or from the infested areas listed in Appendix A without providing the director of agriculture at least 7 days prior notice of the intended movement. The director of agriculture is authorized to inspect the materials prior to movement and to determine and carry out such treatment or other means as is necessary to remove and destroy the African snails found in the materials.
- (b) For purposes of this chapter, “person” means any natural person, whether a private individual or

public employee or official, partnership, or other association, corporation, or government agency.

History: Rule 19-80, eff 1 Sep 80, § 4.

24.0405 Violation-Penalty.

Pursuant to 25.0110 A.S.C.A., any person who violates 24.0404 (a) shall, upon conviction, be subject to imprisonment not to exceed 1 month or a fine of not more than \$100, or both.

History: Rule 19-80, eff 1 Sep 80, § 5.

24.0406 Abatement and removal.

The director of agriculture is further authorized to exercise the authority of the director of health to abate and remove giant African snails under the provisions of 25.0107, 25.0108, and 25.0109 A.S.C.A.

History: Rule 19.80, eff 1 Sep 80, § 6.

24.0407 Appendix A-Giant African snail-infested areas.

Giant African snail-infested areas include all of the central part of the island of Tutuila from Leone Village to the west and Lailii to the east, extending to the north toward the mountains. Heavy concentrations of African snails are found in the following areas:

1. Auma-Leone;
2. Futiga ASG Dumping Site;
3. Aasufou-Aoloau;
4. Mapusaga Fou-Tafeta;
5. Pavaiai;
6. Faleniu;
7. Mesepa;
8. Community College-Malaeimi;
9. Ottoville-sludge dumping area;
10. Airport Road-public works construction;
11. Tafuna Housing-correction facility;
12. Fagaalu;
13. Mt. Alava;
14. Satala-Atuu;
15. Onesosopo Public Dump.

TITLE 24 – CHAPTER 05 – AIR EMISSION RULES & REGULATIONS

Sections

I. GENERAL PROVISIONS

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24.0501 Definitions.

As used in these Standards and Regulations:

- (1) “Air pollutant” means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes odorous substances and any precursors to the formation of any pollutant, to the extent that the agent or combination of such agents is identified in any federal or territory rules as precursors.
- (2) “Air pollution” means the presence in the outdoor atmosphere of one or more substances in such quantities and duration as is or tends to be injurious to human health or welfare, plant or animal life or property, or would unreasonably interfere with the enjoyment of life or property.
- (3) “Air pollution control equipment” means equipment or a facility of a type intended to eliminate, prevent, reduce, or control the emissions of any regulated or hazardous air pollutant to the atmosphere.
- (4) “Air pollution emission source,” “emission source,” “stationary air pollution source” or “source” means any piece of equipment or activity at a building, structure, facility, or installation that emits or may emit any air pollutant. For this definition, “Building, structure, facility, or installation” means all of the air pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except for the activities of any vessel which are not regulated under the federal Clean Air Act. Air pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same “major group” (i.e. which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1987).
- (5) “Allowable emissions” means the emissions of an air pollution emission source calculated using the maximum rated capacity of the source, or, if the source is subject to federally enforceable limits which restrict the operating rate, capacity, or hours of operations, or any combination of these, then the maximum of the source, considering federally enforceable limits, and the most stringent of the following:
 - (A) The applicable standards set forth in 40 CFR Parts 60, 61, and 63;
 - (B) Any American Samoa implementation plan emission limitation, including those with future compliance dates; and
 - (C) The emission rates specified in a federally enforceable permit condition, including those with future compliance dates.
- (6) “Applicant” means any person who submits an application for a permit.
- (7) “ASEPA” means the American Samoa Environmental Protection Agency or its authorized agents.
- (8) “ASCA” means the American Samoa Code Annotated.
- (9) “Best available control technology” means an emissions limitation including a visible emission standard based on the maximum degree of reduction for each pollutant subject to regulation approved pursuant to the Clean Air Act which would be emitted from any proposed air pollution emission source or modification which the executive secretary, on a cases-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard promulgated pursuant to 40 CFR Parts 60, 61, and 63. If the executive secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the

imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

- (10) “BTU” means British thermal unit.
- (11) “CFR” means the Code of Federal Regulations.
- (12) “Clean Air Act” means the Clean Air Act of 1963, as amended, 42 U.S.C. Section 7401, et. seq.
- (13) “Commenced” as applied to construction of or modification to an air pollution emission source, means that the owner or operator, has all necessary preconstruction approvals or permits and either has:
 - (A) Begun, or caused to begin a continuous program of actual operation on-site construction of the source; or
 - (B) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual operation or construction of the source.
- (14) “Commission” means the Environmental Quality Commission.
- (15) “Complete” means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.
- (16) “Compliance Plan” means a plan which includes a description of how an owner or operator proposes to comply with all applicable requirements of these Standards and Regulations and includes a schedule of compliance and a schedule under which the owner or operator will submit progress reports to the Commission.
- (17) “Construction” means a physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of an emissions unit which would result in a change in actual emissions.
- (18) “Director of ASEPA” or “director” means both the director of the ASEPA and the executive secretary of the environmental quality commission or his authorized agents.
- (19) “Draft permit” means the version of a permit for which the director offers public notice, including the method by which a public hearing can be requested, and an opportunity for public comment pursuant to section 24.0539.
- (20) “Emission” means the act of releasing or discharging air pollutants into the ambient air from any source or an air pollutant which is released or discharged into the ambient air from any source.
- (21) “Emission limitation” means a requirement established by the director of ASEPA or USEPA Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
- (22) “Emissions unit” means any part or activity of an air pollution emission source that has the potential to emit any regulated or hazardous air pollutant.
- (23) “Executive secretary” means both the executive secretary of the Environmental Quality Commission and the director of the ASEPA or his authorized agents.
- (24) “Existing air pollution emission source” means an air pollution emission source that has received an air pollution control permit, commenced construction or a modification, or was in operation prior to the effective date of these Standards and Regulations.
- (25) “Federally enforceable” means all limitations and conditions which are enforceable by the

USEPA Administrator or any person commencing an action under 42 U.S.C. 7604, including those requirements developed pursuant to 40 CFR Parts 60, 61, and 63; requirements within the American Samoa Implementation Plan; or any permit requirements established pursuant to 40 CFR 52.21 or all permit terms and conditions in a stationary air pollution source permit except those specifically designated as not federally enforceable or regulations approved pursuant to 40 CFR Part 51 Subpart I, and also including operating permits issued under an EPA-approved program that is incorporated into these standards and regulations and expressly requires adherence to any permit issued under such a program.

- (26) “Fuel burning equipment” means a furnace, boiler, apparatus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by heat transfer.
- (27) “Fugitive emissions” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (28) “Hazardous Air Pollutant” or “HAP” means those hazardous air pollutants listed in or promulgated pursuant to Section 112(b) of the federal Clean Air Act and any other hazardous air pollutants referenced in section 24.0541 of these standards and regulations.
- (29) “mg/m³” means milligrams per cubic meter.
- (30) “Month” means a calendar month.
- (31) “NAAQS” means the National Ambient Air Quality Standards contained in 40 CFR Part 50.
- (32) “National Emission Standards for Hazardous Air Pollutants” means the federal emission standards contained in 40 CFR Parts 61 and 63.
- (33) “New air pollution emission source” means an air pollution emission source that commenced construction or modification on or after the effective date of these Standards and Regulations.
- (34) “Opacity” means a condition which renders material partially or wholly impervious to rays of visible light and causes obstruction of an observer’s view.
- (35) “Owner or operator” means a person who owns, leases, operates, controls, or supervises an air pollution emission source.
- (36) “Particulate matter” means any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.
- (37) “Permit” means written authorization from the Commission, and as applicable, the USEPA Administrator, to construct, modify, relocate, or operate any regulated or hazardous air pollutant source.
- (38) “Permit renewal” means the process by which a permit is reissued at the end of its term.
- (39) “Person” means an individual, firm, corporation, association, partnership, consortium, subdivision of the Territory, or, to the extent they are subject to these Standards and Regulations, the United States or any municipality, or any interstate body.
- (40) “PM₁₀” means particulate matter with the aerodynamic diameter less than or equal to a nominal ten micrometers.
- (41) “Potential annual heat input” means the product of the maximum rated heat input capacity (megawatts or million BTU per hour) times 8760 hours per year.
- (42) “Potential to emit” means the maximum capacity of an air pollution emission source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Commission and the USEPA Administrator.
- (43) “Reconstruction” means the replacement of components at an existing air pollution emission

source to such an extent that the fixed capital cost of the new components exceeds fifty per cent of the fixed capital cost that would be required to construct a comparable entirely new air pollution emission source.

(44) “Regulated air pollutant” means:

- (A) Nitrogen oxides or any volatile organic compound;
- (B) Any air pollutant for which a national or American Samoa ambient air quality standard has been promulgated;
- (C) Any air pollutant that is subject to a standard promulgated under section 111 of the Clean Air Act;
- (D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act;
- (E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Clean Air Act, including sections 112(g), (j), and (r) of the Clean Air Act, including the following:
 - (i) Any pollutant subject to requirements under section 112(j) of the Clean Air Act. If the date established pursuant to section 112(e) of the Clean Air Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Clean Air Act; and
 - (ii) Any other pollutant subject to a standard or requirement in these Standards and Regulations.

(45) “Responsible official” means:

- (A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or an authorized

representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- (i) The facilities employ more than 100 persons or have gross annual sales or expenditures exceeding \$5 million; or
 - (ii) The delegation of authority to such representative is approved in advance by the executive secretary;
- (B) For a partnership or sole proprietorship: a general partner or the proprietor, respectively, or
 - (C) For a municipality, state, federal, or other public agency: a principal executive officer, ranking elected official, or an authorized representative is approved in advance by the director. For the purposes of these Standards and Regulations, a principal executive officer of a federal agency having responsibility for the overall operations of a principal geographic unit of the agency.
- (46) “Risk Assessment” means the process of determining the potential adverse health effects of human exposure to environmental hazards. The process includes hazard identification, dose-response assessment, exposure assessment and risk characterization by quantifying the magnitude of public health problem that results from the hazard.
- (47) “Significant increase” means, in reference to a net emissions increase or the potential of a source to emit:
- (A) A rate of emissions that would equal or exceed any of the following pollutant and emission rates:
 - (1) Carbon monoxide: 100 tpy;
 - (2) Nitrogen oxides: 40 tpy;
 - (3) Sulfur dioxide: 40 tpy;
 - (4) Particulate matter: a total of 25 tpy of particulate matter of all sizes or 15 tpy of PM10;

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- (5) Ozone: 40 tpy of volatile organic compounds;
 - (6) Lead: 0.6 tpy;
 - (7) Asbestos: 0.007 tpy;
 - (8) Beryllium: 0.0004 tpy;
 - (9) Mercury: 0.1 tpy;
 - (10) Vinyl Chloride: 1 tpy;
 - (11) Fluorides: 3 tpy;
 - (12) Sulfuric acid mist: 7 tpy;
 - (13) Hydrogen sulfide (H₂S): 10 tpy;
 - (14) total reduced sulfur (H₂S): methyl mercaptan, dimethyl sulfide, and dimethyl disulfide: 10 tpy;
 - (15) Reduced sulfur compounds (H₂S, carbon disulfide and carbonyl sulfide): 10 tpy;
 - (16) Municipal waste combustor organics: 3.2 grams per year (3.5 x 10⁻⁶ tpy) measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans;
 - (17) Municipal waste combustor metals: 14 megagrams per year (15 tpy) measured as particulate matter; or
 - (18) Municipal waste combustor acid gases: 36 megagrams per year (40 tpy) measured as sulfur dioxide and hydrogen chloride;
- (B) Any net emissions increase of a pollutant or the potential of a source to emit a pollutant subject to regulation pursuant to the Clean Air Act that paragraph (1) does not list; and
- (C) Notwithstanding paragraph (1), any emissions increase associated with a major pollution emission source or major modification, which would be constructed within ten kilometers of a Class I area, and have an impact on such area equal to or greater than on mg/m³ (twenty-four hour average).
- (48) “Smoke” means the gaseous products of burning carbonaceous materials made visible by the presence of small particles of carbon.
 - (49) “Source” means property, real or personal, which emits or may emit any air pollutant.
 - (50) “Stack” means a point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.
 - (51) “Stationary air pollution source permit” means written authorization from the executive secretary to construct, modify, relocate, or operate an air pollution emission source.
 - (52) “Tpy” means tons per year.
 - (53) “Upon program approval” means the date the Territory of American Samoa stationary air pollution source permit program is granted full or interim approval by the USEPA Administrator pursuant to 40 CFR Part 69 and thereafter.
 - (54) “USEPA” means the United States Environmental Protection Agency.
 - (55) “USEPA Administrator” means the Administrator of the USEPA or his or her designee.
 - (56) “VOC” means volatile organic compound.
 - (57) “Volatile Organic Compound” means a compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than methane; ethane; methylene chloride (dichloromethane); 1,1,1 trichloroethane (methyl chloroform); 1,1,1 trichloro-2,2,2 trifluoroethane (CFC – 113); trichlorofluoromethane (CFC- 11); dichlorodifluoromethane (CFC- 12); chlorodifluoromethane (CFC- 22); trifluoromethane (FC- 23); trifluoro-2,2-dichloroethane (HCFC- 123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142B); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);

pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

- (A) Cyclic, branched, or linear, completely fluorinated alkanes;
- (B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- (C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
- (D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

History: 2005

24.0502 Prohibition of air pollution.

No person, including any public body, shall engage in any activity which causes air pollution or causes or allows the emission of any regulated or hazardous air pollutant without first securing a permit from the Commission when required by these Standards and Regulations.

History: 2005

24.0503 Conflicts in laws or rules.

In the event any federal or territory laws, rules, or regulations are in conflict with the provisions of these Standards and Regulations, the most stringent requirement shall apply.

History: 2005

24.0504 Certification.

Every application form, report, compliance plan, or compliance certification submitted pursuant to these standards and regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required pursuant to these Standards and Regulations shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

History: 2005

24.0505 Public access to information.

(a) Except as provided in subsection (b), the following information shall be considered government records and shall be available for public inspection pursuant to 24.0109 ASCA:

- (1) All permit applications;
- (2) All supporting information for permit applications;
- (3) Compliance plans and schedules;
- (4) Reports and results associated with performance tests and continuous emission monitors;
- (5) Ambient air monitoring data and emissions inventory data;
- (6) Compliance certifications;
- (7) Any other information submitted to the Commission pursuant to the air pollution control permit program;
- (8) Permits; and
- (9) Public comments or testimonies received during any public comment period or public hearing.

(b) Any owner or operator of an existing or proposed air pollution emission source may request confidential treatment of specific information, including information concerning secret processes or methods of manufacture, by submitting a written request to the Commission at the time of submission, and clearly identifying the specific information that is to be accorded confidential treatment. With respect to each item of confidential information, the owner or operator requesting that it be designated as confidential shall provide documentation concerning:

- (1) How each item of information concerns secret processes, secret method of manufacture, or is determined to be confidential pursuant to ASCA 24.0109;
- (2) Who has access to each item of information;
- (3) What steps have been taken to protect the secrecy of each item of information; and

- (4) Why it is believed each item of information must be accorded confidential treatment and the anticipated prejudice should disclosure be made.
- (c) Any information submitted to the Commission without a request for confidentiality in accordance with this section shall be considered a public record;
- (1) Upon a satisfactory showing to the Commission by any owner or operator that any records, reports, or information, or particular part thereof, to which the Commission has access pursuant to these Standards and Regulations, contain information of a confidential nature under ASCA 24.0109, the executive secretary shall identify the records, reports or information, or particular part thereof, for which access is restricted or closed by law and these shall be kept confidential except that such records, reports, or information may be disclosed to other territory and federal officers or employees concerned with carrying out these Standards and Regulations or when relevant in any proceeding pursuant thereto. If required by USEPA, all records, reports or information determined by the owner or operator to be confidential shall be submitted directly to USEPA. Neither the contents of the permit nor emissions data shall be entitled to confidentiality protection.
- (2) Records, reports, or information for which confidentiality has been claimed may be disclosed only after the requirements of ASCA 24.0160 have been satisfied and the person requesting confidentiality has had an opportunity to obtain judicial review pursuant to subsection (f).
- (3) Any person who has claimed confidentiality for records, reports or other information and whose claim was denied by the Commission may obtain judicial review of the denial pursuant to ASCA 24.0160. Records which are the subject of a judicial review shall not be released until the

judicial review is complete and only if the court authorizes such release.

- (4) All requests for public records shall be in writing, shall be addressed to the executive secretary of the Commission, and shall identify or describe the character of the requested record. Upon approval by the Commission, the requested public record shall be available to the requester for inspection and copying during established office hours. The Commission shall charge a reasonable cost for reproduction of any public record, but not more than twenty-five cents per page, sheet, or fraction thereof.

History: 2005

24.0506 Prompt reporting of deviations.

In the event any emission unit, air pollution control equipment, or related equipment breaks down in such a manner as to cause the emission of air pollutants in violation of these Standards and Regulations or a permit, the owner or operator shall immediately notify the executive secretary of the failure or breakdown, unless the protection of personnel or public health or safety demands immediate attention to the failure or breakdown and makes such notification unfeasible. In the latter case, the notice shall be provided as soon as practicable, but in all cases within two working days of the time when emission limitations were exceeded due to the emergency. In the case of emergencies which result in noncompliance with section 24.0537 for air pollution emission sources, compliance with section 24.0537 shall satisfy the requirements of this section.

History: 2005

24.0507 Penalties and Remedies.

Any person who violates any provision of these Standards or Regulations or any term or condition of a permit shall be subject to the penalties and remedies provided for in section 24.0150 through 24.0166 ASCA.

History: 2005

24.0508 Severability.

If any provision of these Standards and Regulations or their application to other persons or circumstances is held invalid, the application of such provision to

other persons or circumstances and the remainder of these Standards and Regulations shall not be affected thereby.

History: 2005

24.0510 Ambient Air Quality Standards.

(a) The ambient air quality standards for the territory of American Samoa shall be the same as the National Primary and Secondary Air Quality Standards set forth at 40 CFR 50.1, et seq. These standards are enumerated below:

- (1) The American Samoa ambient air quality standard for sulfur oxide measured as sulfur dioxide is 1,300 micrograms per cubic meter (0.5 p.p.m.) maximum 3-hour concentration not to be exceeded more than once per year; the 24-hour standard is 0.14 p.p.m not to be exceeded more than once per year; and the annual standard is 0.030 p.p.m not to be exceeded in a calendar year.
- (2) The American Samoa 24-hour ambient air quality standards for particulate matter (PM10) is 150 micrograms per cubic meter, 24-hour average concentration. The annual standard for particulate matter is 50 micrograms per cubic meter (mg/m3), annual arithmetic mean.
- (3) The American Samoa ambient air quality standard for ozone (measured by reference to 40 CFR 50 appendix D) is .12 parts per million (235 mg/m3).
- (4) The American Samoa ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter) annual arithmetic mean concentration.
- (5) The American Samoa ambient air quality standard for lead is 1.5 micrograms per cubic meter maximum arithmetic mean over a calendar quarter.
- (6) The American Samoa ambient air quality standard for carbon monoxide is 10 mg/m3 (9ppm) as a maximum 8-hour average concentration not to be exceeded more than once per year, and 40 mg/m3 (35 ppm)

maximum 1-hour average concentration not to be exceeded more than once per year.

- (b) Measurements for American Samoa ambient air quality standards shall be determined using methods set out in 40 CFR part 50, including appropriate appendices thereto, or by any other methods approved in advance by the Commission.
- (c) These numerical air quality standards are the maximum allowable concentrations of pollutants in the ambient air necessary to protect the health and welfare of the people of American Samoa. No degradation of the quality of the ambient air shall be permitted in areas in which the concentrations of the identified pollutants are lower than the numerical standards established by these Standards and Regulations unless such lowering of air quality will not violate any applicable federal law or regulations (including prevention of significant deterioration) and it has been adequately demonstrated to the executive secretary that a degradation of the air quality in an area is justified as a result of necessary economic or social development and that such lowering of air quality will not seriously interfere with or become injurious to the health, enjoyment, and comfortable enjoyment of life or property.

History: 2005

24.0511 Incineration.

- (a) No person shall cause or permit the emissions of particulate matter to exceed 0.20 pounds per one hundred pounds (two grams per kilogram) of refuse charged from any incinerator.
- (b) All required emission tests shall be conducted at the maximum burning capacity of the incinerator or at other capacities, as approved by the Commission.
- (c) The burning capacity of an incinerator shall be the manufacturer’s or designer’s guaranteed maximum rate or such other rate as may be determined by the Commission.
- (d) For the purposes of this section, the total of the capacities of all furnaces within one system shall be considered as the incineration capacity.

History: 2005

24.0512 Open Burning.

No person shall dispose of combustible material by open burning, or ignite, cause to be ignited, permit to be ignited, or maintain any open fire within the territorial limits of American Samoa, except as follows:

- (1) Open fires for the cooking of food for human consumption on other than commercial premises;
- (2) Fires for recreational or ceremonial purposes;
- (3) Fires to abate a fire hazard, providing a hazard is declared by the fire department or fire district having jurisdiction in the area;
- (4) Fires for prevention or control of disease or pests;
- (5) Fires for training personnel in the methods of fighting fires in compliance with 24.0511(1);
- (6) Fires for the disposal of dangerous materials, but only where there is no alternate method of disposal and such burning is approved in advance by the executive secretary;
- (7) Agricultural burning;
- (8) Other open burning as deemed necessary and approved in advance by the executive secretary.

History: 2005

24.0513 Hearings.

Any person who receives an order from the Commission or its authorized representatives as authorized by these Standards and Regulations, or whose permit application is disapproved or denied by the Commission, or is adversely affected by a decision of the Commission may have appeal or judicial review rights as provided for in 24.0123 and 24.0160 ASCA.

History: 2005

III. PERMITS

24.0520 Definitions.

As used in this Part:

- (1) “Administrative permit amendment” is a permit revision that:
 - (A) Corrects typographical errors;
 - (B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 - (C) Requires more frequent monitoring or reporting by the permittee;
 - (D) Consolidates the terms and conditions of two or more air pollution control permits into one air pollution control permit for a facility; and
 - (E) Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the executive secretary.
- (2) “AP-42” means the most recent edition, supplements, and appendices of USEPA’s Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources.
- (3) “Applicable requirement” is defined as follows:
 - (A) If an air pollution emission source is a federal oversight source, “applicable requirement” means all of the following as they apply to emissions units in the air pollution emission source (including requirements that have been promulgated or approved by USEPA through rulemaking at the time of issuance but have future-effective compliance dates):
 - (i) Any standard or other requirement provided for in the applicable state implementation plan approved or promulgated by USEPA, including any revision to that plan promulgated in 40 CFR Part 52;

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- (ii) Any term or conditions of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Clean Air Act; apply to temporary sources pursuant to section 504(e) of the Clean Air Act.
 - (iii) Any standard or other requirement under section 111 of the Clean Air Act, including section 111(d);
 - (iv) Any standard or other requirement under section 112 of the Clean Air Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;
 - (v) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Clean Air Act;
 - (vi) Any standard or other requirement governing solid waste incineration, under section 129 of the Clean Air Act;
 - (vii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Clean Air Act;
 - (viii) Any standard or other requirement for tank vessels under section 183(f) of the Clean Air Act;
 - (ix) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Clean Air Act;
 - (x) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Clean Air Act, unless the USEPA Administrator has determined that such requirements need not be contained in an air pollution control permit; and
 - (xi) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Clean Air, but only as it would
- (B) For all other air pollution emission sources, “applicable requirement” shall mean all of the following as they apply to emissions units in the air pollution emission source:
 - (i) Any NAAQS or American Samoa air quality standard;
 - (ii) The application of best available control technology to control those pollutants subject to any NAAQS or American Samoa air quality standard, but only as best available control technology would apply to new or proposed air pollution emission sources and modifications to air pollution emission sources that have the potential to emit or increase emissions above significant amounts considering any limitations, enforceable by the Commission, on the air pollution source to emit a pollutant; and
 - (iii) Any standard or other requirement provided in these Standards and Regulations.
 - (4) “Federal oversight source” means an air pollution emission source that does not qualify for a source category exemption under 40 CFR § 70.3(b) and that is:
 - (A) A major source;
 - (B) Subject to standards of performance or other requirement of section 111 of the Clean Air Act;
 - (C) A non-major source of hazardous air pollutants subject to an emission standard or other requirement for hazardous air pollutants pursuant to Section 112 of the Clean Air Act or Part V of these Standards and Regulations, except those sources solely subject to regulations or requirements pursuant to Section 112(r) of the Clean Air Act.

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- (5) “Insignificant sources” means any air pollution emission sources that can be classified as insignificant sources – type I or insignificant sources – type II.
- (6) “Insignificant sources – type I” means any air pollution emission source that is not a federal oversight source and includes only the following sources of air pollutants:
- (A) Any storage tank, reservoir or other container of capacity equal to or less than forty thousand gallons storing volatile organic compounds, except those storage tanks, reservoirs, or other containers subject to any standard or other requirement pursuant to Sections 111 and 112 of the Clean Air Act;
 - (B) Other than smoke house generators, fuel burning equipment with a heat input capacity less than one million BTU per hour, except where the total heat input capacity of all individually exempted equipment exceeds five million BTU per hour when operated within the facility and controlled by a single owner or operator;
 - (C) Steam generators, steam superheaters, water boilers, or water heaters, which have a heat input capacity of less than five million BTU per hour, and are fired exclusively with natural, synthetic, or liquefied petroleum gas, or any combination of these;
 - (D) Kilns used for firing ceramic ware heated exclusively by natural gas, electricity, liquid petroleum gas, or any combination of these and have a heat input capacity of five million BTU per hour or less;
 - (E) Standby generators used exclusively to provide electricity, standby sewage pump personnel and the public, all of which are used only during power outages, emergency equipment maintenance and testing, and are fired exclusively by natural or synthetic gas; or liquefied petroleum gas; or fuel oil No. 1 or No. 2; or diesel fuel oil No. 1D or No. 2D;
 - (F) Paint spray booths;
 - (G) Welding booths (if there are more than five at the facility); and
 - (H) Portable diesel or gasoline fired industrial equipment less than two hundred horsepower in size which are used during power outages or intermittently for maintenance and repair purposes (if there are more than five at the facility);
- (7) “Insignificant sources- type II” means any air pollution emission source that is not a federal oversight source and includes only the following sources of air pollutants:
- (A) Welding booths (if less than five at a facility);
 - (B) Portable diesel or gasoline fired industrial equipment less than two hundred horsepower in size which are used during power outages or intermittently for maintenance and repair purposes (if less than five at the facility);
 - (C) Hand held equipment used for buffing, polishing, carving, cutting, drilling, machining, sanding, sawing or surface grinding, provided reasonable precautions are taken to prevent particulate matter from becoming airborne. Reasonable precautions include the use of dust collection systems, dust barriers, or containment systems;
 - (D) Laboratory equipment used exclusively for chemical and physical analyses;
 - (E) Containers, reservoirs, or tanks used exclusively for dipping operations for coating objects with oils, waxes, or greases where no organic solvents, diluents, or thinners are used; or dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents;
 - (F) Closed tumblers used for cleaning or deburring metal products without abrasive blasting, and pen tumblers with batch capacity of one thousand pounds or less.

- (G) Ocean going vessels, except for ocean-going vessels subject to any standard or other requirement for the control of air pollution from outer continental shelf sources pursuant to 40 CFR Part 55;
 - (H) Fire water system pumps dedicated for fire-fighting and to maintain fire water system pressure, and fired exclusively by natural or synthetic; or liquefied petroleum gas; or fuel oil No. 1 or No. 2; diesel fuel No. 1D or No. 2D;
 - (I) Smoke generating systems used exclusively for training in government or certified fire fighting training facilities;
 - (J) Mobile internal combustion engines;
 - (K) Diesel fired portable ground support equipment exclusively to start aircraft or provide temporary power to aircraft prior to start-up;
 - (L) Fuel burning equipment which is used in a private dwelling or for space heating, other than boilers or hot furnaces;
 - (M) Ovens, stoves, or grills used solely for the purpose of preparing food for human consumption operated in private dwellings, restaurants, or stores;
 - (N) Stacks or vents to prevent escape of sewer gasses through plumbing traps;
 - (O) Air conditioning or ventilation systems not designed to remove air pollutants generated by ore released from equipment, and that do not involve the open release or venting of CFCs into the atmosphere; and
 - (P) Woodworking shops with a sawdust collection system.
- (8) “Major source” means an air pollution emission source, or a group of air pollution emission sources that are located on one or more contiguous properties or adjacent properties, and are under common control or command of the same person or persons, belonging to a single major industrial grouping (i.e., all have the same two-digit Standard Industrial Classification Code) and that emits or has the potential to emit:
- (A) Any hazardous air pollutant, except radionuclides, in the aggregate of ten tons per year or more including fugitive emissions, or twenty-five tons per year or more of any combination including fugitive emissions, or such lesser quantity as the USEPA Administrator may establish by rule;
 - (B) One hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act or these Standards and Regulations. Fugitive emissions from the air pollution emission source shall be considered in determining whether the source is major, if it belongs to one of the following categories of air pollution emission sources:
 - (i) Coal cleaning plants (with thermal dryers);
 - (ii) Kraft pulp mills;
 - (iii) Portland cement plants;
 - (iv) Primary zinc smelters;
 - (v) Iron and steel mills;
 - (vi) Primary aluminum ore reduction plants;
 - (vii) Primary copper smelters;
 - (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
 - (ix) Hydrofluoric, sulfuric or nitric acid plants;
 - (x) Petroleum refineries
 - (xi) Lime plants;
 - (xii) Phosphate rock processing plants;
 - (xiii) Coke oven batteries;
 - (xiv) Sulfur recovery plants;
 - (xv) Carbon black plants (furnace process);

- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil fuel boilers (or combination thereof) totaling more than 250 million BTU per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil fuel fired steam electric plants of more than 250 million BTU per hour heat input; and
- (xxvii) All other air emission source categories regulated by a standard promulgated pursuant to Section 111 or 112 of the Clean Air Act, but only with respect to those air pollutants that have been regulated for that category; or
 - (A) For radionuclides, major source shall have the meaning specified by the USEPA Administrator by rule.
 - (B) In nonattainment areas, a major stationary source as defined in part D of title I of the Clean Air Act, including:
 - (i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate,” 50 tpy or more in areas classified as “serious,” 25 tpy or more in areas classified as “severe,” and 10 tpy or more in areas classified as “extreme”;
 - (ii) For ozone transport regions established pursuant to section 184 of the Clean Air Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;
 - (iii) For carbon monoxide nonattainment areas:
 - (A) That are classified as “serious,” and
 - (B) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and
 - (iv) For particulate matter (PM-10) nonattainment areas classified as “serious,” sources with the potential to emit 70 tpy or more of PM-10.

(9) “Modification” means a physical change in or change in the method of operation of an air pollution emission source which requires a

change to a permit. Routine maintenance, repair and replacement shall not be considered a modification.

- (10) “Pollution prevention” means the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source.
- (11) “Significant modification” means a modification of a federal oversight source which:
- (A) Increases the emissions of any air pollutant above the permitted emission limits;
 - (B) Results in significant increase in emissions of any air pollutant;
 - (C) Violates an applicable requirement;
 - (D) Involves a relaxation or changes other than administrative permit amendments to existing monitoring requirements or reporting or recordkeeping requirements in the permit. Any change to the existing monitoring, reporting, or recordkeeping requirements that reduces the enforceability of the permit is considered a significant change;
 - (E) Requires or changes a case-by-case determination of an emission limitation or other standard, or a visibility or increment analysis;
 - (F) Is a modification pursuant to any provision of Title I of the Clean Air Act.

History: 2005

24.0521 Program Applicability.

- (a) Except as provided in subsection (b), no federal oversight source or any other air pollutant emission source with potential emissions greater than 1 ton per year of any air pollutant or more than 0.1 ton per year of any hazardous air pollutant may begin construction or continue operation without first obtaining a valid stationary air pollution source permit from the Commission.
- (b) If an air pollution emission source is also a major source emitting HAPs, the owner or operator of such source shall obtain an air pollution control

permit from the USEPA Administrator under the provisions of 40 CFR Part 71. A copy of this permit shall be furnished to the Commission prior to the commencement or continuation of construction, reconstruction, modification, relocation or operation of the source.

- (c) Stationary air pollution source permits issued by the Commission shall remain valid past the expiration date and the air pollution emission source shall not be in violation for failing to have a stationary air pollution source permit until the Commission has issued or denied the renewal of such permit, provided:
 - (1) In the six to eighteen months prior to permit expiration, a complete renewal application has been submitted and the owner or operator acts consistently with the permit previously granted, and the application on which it was based, and all plans, specifications, and other information submitted as part of the application; and
 - (2) The owner or operator has submitted to the Commission within the specified deadlines all requested additional information deemed necessary to evaluate or take final action on the renewal application as described in section 24.0524.
- (d) The air pollution control permit shall not constitute, nor be construed as an approval of the design of the air pollution emission source. The permit shall be issued in accordance with these Standards and Regulations and it is the responsibility of the applicant to ensure compliance with all applicable requirements in the construction of any air pollution emission source.

History: 2005

24.0522 General conditions for issuing a permit.

- (a) The Commission may issue a stationary air pollution source permit if the owner or operator of an air pollution emissions source can show to the satisfaction of the Commission that all applicable provisions of these Standards and Regulations will be complied with, including, as applicable:

- (1) The maintenance and attainment of an NAAQS and any American Samoa ambient air quality standard;
 - (2) General prohibitions and standards (and regulations specific to that source) pursuant to Part II of these standards and regulations;
 - (3) Requirements for air pollution emission sources pursuant to Part III of these standards and regulations;
 - (4) Applicable Standards of Performance for New Stationary Sources (40 CFR Part 60), National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61), or any other federal standard or other requirement established pursuant to the Clean Air Act.
 - (5) Applicable standards of performance for air pollution emission sources pursuant to Part IV of these Standards and Regulations; and
 - (6) Requirements for hazardous air pollutant sources pursuant to Part V;
- (b) Air pollution control permits, including permit renewals, and permit amendments for modifications shall be issued only if all of the following conditions are met:
- (1) The Commission has obtained enough information to determine that the air pollution emission source will comply with all of the requirements of subsection (a);
 - (2) The executive secretary has provided an opportunity for all applicable public participation requirements pursuant to section 24.0539;
 - (3) the permit provides for compliance with all applicable requirements and contains applicable terms and conditions pursuant to 24.0528; and
 - (4) All applicable requirements for transmission of information to USEPA and USEPA oversight have been satisfied pursuant to 24.0532 and 24.0533.

History: 2005

24.0523 Holding, transfer, and cancellation of permit.

- (a) Each stationary air pollution source permit, or a copy thereof, shall be maintained at or near the air pollution emission source for which the permit was issued and shall be made available for inspection upon the executive secretary's request.
- (b) No person shall willfully deface, alter, forge, counterfeit, or falsify a stationary air pollution source permit.
- (c) All permits issued pursuant to these Standards and Regulations shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another.
- (d) All permits issued pursuant to these Standards and Regulations shall not be transferable, whether by operation of law or otherwise, from one person to another without the approval of the Commission.
- (e) Within thirty days of permanent discontinuance of the operation of any permitted air pollution emission source, the discontinuance shall be reported in writing to the Commission by a responsible official of the source.

History: 2005

24.0524 Stationary air pollution source permit application.

- (a) Except as stated in subsection (b), applications for stationary air pollution source permits shall be submitted to the director on forms furnished by the Commission. A copy of this form is appended hereto and incorporated by reference herein. The applicant shall further submit sufficient information to enable the Commission to make a decision on the application and to determine the fee requirements specified in 24.0540 and 24.0541.
- (b) For air pollution emission sources required to obtain a federal operating permit under the provisions of 40 CFR Part 71, owners and operators may submit a copy of the federal permit application to the Commission in place of forms furnished by the Commission. The owner

or operator must include with the application a form to calculate annual fees pursuant to section 24.0541. All signatures required on the application forms must be original signatures.

(c) Applications for initial stationary air pollution source permits shall include the following information:

(1) Identifying information about the stationary air pollution emission source, including name address, and phone number of:

(A) The company (the plant if different from the company);

(B) The owner and the owner's agent;

(C) The plant site manager or other contact; and

(D) The person responsible for recordkeeping, and the location where required records are to be kept.

(2) A description of the nature, location, design capacity, production capacity, production rates, fuels, fuel use, raw materials, and typical operating schedules to the extent needed to determine or regulate emissions; specifications and drawings showing the design of the source and plant layout; and a description of all processes and products by Standard Industrial Classification Code;

(3) Maximum emissions rates, including fugitive emissions, of all regulated and hazardous air pollutants and all air pollutants for which the source is major from each emissions unit. Emissions rates shall be reported in pounds per hour and tons per year and in such terms necessary to establish compliance consistent with the applicable requirements and standard reference test methods. All supporting emissions calculations and assumptions shall also be provided;

(4) Identification and detailed description of air pollution control equipment and compliance monitoring devices or activities as planned by the owner or operator of the source, and to the extent of available

information, an estimate of emissions before and after controls;

(5) Current operational limitations or work practices, or for air pollution emission sources that have not yet begun operations, such limitations or practices which the owner or operator of the source plans to implement that affect emissions of any regulated or hazardous air pollutants at the source;

(6) All calculations and assumptions upon which paragraphs (2), (4) and (5) are based;

(7) A copy of any/all air pollution permits issued by the Commission or USEPA;

(8) A compliance plan and compliance certification pursuant to section 24.0528;

(9) Citation and description of all applicable requirements, a description of or reference to any applicable test method for determining compliance with each applicable requirement, and an explanation of all proposed exemptions from any applicable requirement.

(10) For proposed or new major sources or significant modifications:

(A) A detailed schedule for construction of the source or modification;

(B) For existing sources, an assessment of the ambient air quality impact of the air pollution emission source. The assessment shall include all supporting data, calculations and assumptions, and a comparison with the NAAQS;

(C) For new sources and significant modifications which increase the emissions of any air pollutant or result in the emission of any air pollutant not previously emitted, an assessment of the ambient air quality impact of the new source or significant modification, with the inclusion of any available background air quality data. The assessment shall include all supporting data, calculations and assumptions,

and a comparison with the NAAQS;
and

- (D) An explanation of all proposed exemptions from any applicable requirement.

(11) At the request of the Commission, the following information must also be submitted:

- (A) A risk assessment of the air quality related impacts caused by the source or significant modification to the surrounding environment;
- (B) Results of source emission testing, ambient air quality monitoring, or both;
- (C) Information on other available control technologies; and
- (D) Other information deemed necessary to make a decision on the application or needed to implement and enforce other applicable requirements of the Clean Air Act or these Standards and Regulations, or to determine the applicability of such requirements; and

(12) A certification by a responsible official of truth, accuracy, and completeness of all submitted documents.

- (d) Applications for renewals of stationary air pollution source permits are subject to the same requirements as an initial application. If the source is a federal oversight source, applications for renewal shall be submitted at least six (6) months prior to permit expiration. For all other air pollution emission sources, renewal applications are due 60 days prior to permit expiration. Late applications shall be subject to penalties pursuant to section 24.0542(d). Applicants shall submit a statement certifying whether any changes have been made in the design or operation of the source as proposed in the initial and any subsequent permit applications. If changes have occurred or are proposed, the applicant shall provide a description of those changes such as work

practices, operations, equipment design, and monitoring procedures, including the affected applicable requirements associated with the changes and the corresponding information to determine the applicability of all applicable requirements. If the application for renewal has not been approved or denied within the time specified in subsection (j), the stationary air pollution source permit and all its terms and conditions shall remain in effect and not expire until the application for renewal has been approved or denied, provided the applicant has submitted any additional information within the reasonable deadline specified by the Commission.

- (e) If an air pollution emission source includes insignificant sources – type I or insignificant sources – type II, the insignificant sources shall be exempt from the permit application requirements of subsection (a), provided:
 - (1) No such exemption interferes with the imposition of any applicable requirement or the determination of whether an air pollution emission source is subject to an applicable requirement; and
 - (2) The owner or operator can demonstrate to the director that the source meets the size, emission level, or production rate criteria specified in the definition of insignificant source.
 - (3) Insignificant sources – type I shall be identified in the air pollution control permit application. Insignificant sources – type II need not be identified in the air pollution control permit application. The Commission may request additional information on any insignificant source to determine the applicability of a fee requirement, or to impose any applicable requirement, or to determine the fee requirement specified in section ASAC 24.0534.
- (f) Applications for modifications of stationary air pollution source permits are subject to the same requirement as an initial application. Applicants shall submit a description of the modification,

identifying all proposed changes, including any changes to the source operations, work practices, equipment design, source emissions or any monitoring, record keeping, and recording procedures. Each change from the permit application for the existing stationary air pollution source permit shall be identified on the application for the permit modification.

- (g) The Commission shall not continue to act upon or consider an incomplete application. An application shall be determined to be complete only when all of the following have been complied with:
 - (1) All information required or requested on the application form and pursuant to subsections (a) through (f);
 - (2) All documents requiring certification have been certified pursuant to section 24.0504;
 - (3) All applicable fees pursuant to sections 24.0540 through 24.0543 have been submitted; and
 - (4) The executive secretary has certified that the application is complete.
- (h) The executive secretary shall notify the applicant in writing whether the application is complete within sixty (60) days of receipt of the application. Unless the executive secretary requests additional information or notifies the applicant of incompleteness within sixty (60) days after receipt of an application, the application shall be deemed complete.
- (i) During the processing of an application that has been determined or deemed complete, if the executive secretary determines that additional information is necessary to evaluate or take final action on the application, the executive secretary may request such information in writing and set a reasonable deadline for a response.
- (j) If an air pollution emission source is a federal oversight source, the Commission shall approve or deny an application for a stationary air pollution source permit within twelve (12) months after receipt of a complete application for an existing source, and within ninety (90)

days after receipt of a complete application for a non-significant modification. For all other air pollution emission sources, the Commission shall approve, conditionally approve, or deny an application for a permit within twelve (12) months after receipt of a complete application for a new source, and within 90 days after receipt of a complete application for an existing source or modification.

- (k) A stationary air pollution source permit for a new source or a significant modification shall be approved only if the Commission determines that the construction and operation of the new source or significant modification will be in compliance with all applicable requirements.

History: 2005

24.0525 Submittal of initial permit applications- deadlines.

- (a) Upon program approval, all owners or operators of existing air pollution emission sources shall submit to the Commission a complete initial permit application within twelve (12) months of program approval. Owners or operators of such sources who applied for a stationary air pollution source permit prior to program approval, but have not yet received a permit, shall also submit a complete and timely permit application within twelve (12) months of program approval. An owner or operator shall not commence or continue construction, reconstruction, modification, relocation or operation without a permit issued under these standards and regulations unless written approval is granted by the Commission.
- (b) Upon program approval, all owners or operators of new or proposed air pollution emission sources who have not previously applied for a stationary air pollution source permit shall submit a complete permit application within twelve (12) months of program approval. A stationary air pollution source permit shall be obtained prior to commencement of construction, reconstruction, modification, relocation or operation unless written approval is granted by the Commission.

- (c) All existing stationary air pollution source permits shall remain valid past the expiration date for a period not to exceed 15 months until a new stationary air pollution source permit is issued under these standards and regulations.
- (d) Requests for an extension of time to file a permit application shall be made at least thirty (30) days prior to the required submission date and shall include the following information:
 - (1) Justification for the extension, including a showing that reasonable effort and resources have been and are being utilized in the preparation of the application;
 - (2) A description of the problems being encountered and the reasons for the delays in meeting the application deadline;
 - (3) The current status of the stationary air pollution source permit application; and
 - (4) The projected completion date of stationary air pollution source permit application. If the Commission disapproves an extension for initial application submittal, the owner or operator shall meet the scheduled submission date. Under no circumstances shall the deadline for submitting an initial stationary air pollution source permit application be extended more than 15 months past program approval.
- (e) All stationary air pollution source permit applications, compliance plans, compliance certifications, and filing fees shall be submitted in accordance with sections 24.0524, 24.0527, and 24.0540 through 24.0543.

History: 2005

24.0526 Duty to supplement or correct permit applications.

An applicant for a stationary air pollution source permit who fails to submit any relevant facts or who has submitted incorrect information in any permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements

that become applicable to the source after the date it filed a complete application but prior to the release of the draft permit.

History: 2005

24.0527 Compliance plans and certifications.

A compliance plan and compliance certification shall be submitted with each permit application, at such times as requested by the Commission and as otherwise required by subsections (a)(1) and (a)(2) of this rule.

- (1) The compliance plan required by this rule shall be submitted by the owner or operator of an air emissions source and shall include at a minimum the following information:
 - (A) A description of the compliance status of the existing air pollution emission source or proposed source with respect to the applicable requirements, and the following statement or description and compliance schedule for expeditiously achieving compliance, as applicable:
 - (i) For applicable requirements with which the source is in compliance, a statement that the source is in compliance with all applicable requirements and will continue to comply with such requirements;
 - (ii) For applicable requirements which become applicable during the permit term, a statement that the source will meet all such applicable requirements on a timely basis. The statement shall include documentation on the proposed method the owner or operator will use to obtain compliance and a compliance schedule demonstrating that the source will expeditiously achieve compliance with such applicable requirement by the date specified in the applicable requirement. A detailed schedule for compliance shall be provided if required by the applicable requirement.

(iii) For applicable requirements with which the source is not in compliance, a narrative description of how the source will achieve compliance and a detailed compliance schedule containing specific milestones of remedial measures to expeditiously achieve compliance. The compliance schedule shall supplement and shall not sanction noncompliance with the applicable requirements on which the schedule is based.

(B) If a compliance plan is to remedy a violation, a progress report certified pursuant to section 24.0504 shall be submitted no less frequently than annually and shall include:

- (i) Dates for achieving the activities, milestones, or compliance and dates when such activities, milestones or compliance were achieved;
- (ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(2) The compliance certifications required by this rule shall be submitted annually and with each permit application by a responsible official of the emissions source. The responsible official shall certify that the compliance certification is true, accurate and complete. Such certifications shall include:

(A) For certifications submitted with permit applications, a detailed description of the methods to be used in determining compliance with all applicable requirements and a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements, including the requirements of Section 114(a)(3) of the Clean Air Act or any applicable enhanced monitoring and analysis provisions of Section 504(b) of the Clean Air Act;

(B) For annual compliance certifications and those requested by the Commission, the identification of each term or condition of the permit that is the basis of the certification; the source's compliance status currently and over the reporting period; a description of the methods used for determining compliance status currently and over the reporting period; and a compliance plan submitted in accordance with subsection (1) of this section.

History: 2005

24.0528 *Permit content.*

The Commission shall consider and incorporate the following elements in all stationary air pollution source permits, as applicable:

- (1) Quantifiable emissions limitations and standards, including operational requirements and limitations, to ensure compliance with all applicable requirements at the time of issuance;
- (2) Requirements regarding fugitive emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of "major source";
- (3) The origin of and authority for each term or condition and any differences in form as compared to the applicable requirement upon which the term or condition is based;
- (4) The permit term pursuant to section 24.0529;
- (5) Requirements for the installation of devices, at the expense of the owner, for the measurement or analysis of source emissions or ambient concentration of air pollutants;
- (6) The requirement for source emissions tests or alternative methodology to determine compliance with all terms and conditions of the stationary air pollution source permit, and applicable requirements. Source emission tests conducted or alternative methodology used shall be at the expense of the owner or operator;
- (7) All monitoring and related recordkeeping and reporting requirements to assure compliance with all terms and conditions of the permit. Each stationary air pollution source permit shall

address the following with respect to monitoring, record keeping, and reporting:

- (A) All reporting, emissions monitoring and analysis procedures, or test methods required pursuant to the applicable requirements, including any procedures or methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Clean Air Act;
- (B) If the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, periodic monitoring or recordkeeping sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit;
- (C) Monitoring results expressed in units, averaging periods, and other statistical conventions consistent with the applicable requirements;
- (D) Requirements concerning the use, maintenance, and installation of monitoring equipment. The installation, operation, and maintenance of the monitoring equipment shall be at the expense of the owner or operator;
- (E) Appropriate monitoring methods;
- (F) Monitoring records including:
 - (i) Place as defined in the permit, date, and time of sampling or measurement;
 - (ii) Dates the analyses were performed;
 - (iii) The name and address of the company or entity that performs analyses;
 - (iv) Analytical methods or techniques used;
 - (v) Analyses results; and
 - (vi) Operating conditions during the time of sampling or measurement;
- (G) Other records including support information, such as calibration and maintenance records, original strip chart recordings or computer printouts for continuous monitoring instrumentation, and

all other reports required by the Commission;

- (H) A requirement for the retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit;
 - (I) A requirement for submission of reports of any required monitoring at least every six months. Deviations from the permit requirements shall be clearly identified and addressed in these reports;
 - (J) A requirement for prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The term "prompt" shall be delineated on a permit-by-permit basis in relation to the degree and type of deviation likely to occur and the applicable requirements; and
 - (K) provisions for the owner or operator to annually report, in writing, emissions of hazardous air pollutants;
- (8) Pollution prevention audits and the implementation of pollution prevention measures to ensure that emissions are reduced or eliminated when feasible;
- (9) General provisions including:
- (A) A statement that the owner or operator shall comply with the terms and conditions of its permit and that any permit noncompliance constitutes a violation of these Standards and Regulations and, for all federally enforceable terms or conditions, the Clean Air Act, and is grounds for enforcement action, permit termination, suspension,

- reopening, or amendment, or for denial of a permit renewal application;
- (B) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit;
 - (C) A statement that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the terms and conditions of the permit;
 - (D) A statement that the permit may be terminated, suspended, reopened, or amended for cause pursuant to section 24.0538. The filing of a request by the permittee for a permit termination, suspension, reopening, or amendment, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;
 - (E) A statement that the permit does not convey any property rights of any sort, or any exclusive privilege;
 - (F) A provision that the owner or operator shall notify the Commission in writing of the anticipated date of initial start-up for each emission unit of a new air pollution emission source or significant modification not more than sixty days or less than thirty days prior to such date. The Commission shall also be notified in writing of the actual date of construction commencement and start-up within fifteen days after these dates;
 - (G) A statement that the owner or operator shall furnish in a timely manner any information or record requested in writing by the Commission to determine whether cause exists for terminating, suspending, reopening, or amending the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish copies of records required to be kept by the permit.
 - (H) A requirement that a copy of applicable correspondence or records submitted to the Commission be provided to USEPA pursuant to section 24.0532.
 - (I) A provision for the designation of confidentiality of any records to be afforded confidentiality pursuant to section 24.0505.
 - (J) A requirement that the owner or operator shall submit fees in accordance with sections 24.0540 and 24.0541;
 - (K) Certification requirements pursuant to section 24.0504.
 - (L) A requirement that the owner or operator allow the director or an authorized representative, at least once per calendar year or at any other time upon presentation of credentials or other documents required by law:
 - (i) To enter the owner or operator's premises where a source is located or emission-related activity is conducted, or where records must be kept under the conditions of the permit and inspect at reasonable times all facilities, equipment, including monitoring and air pollution control equipment, practices, operations, or records covered under the terms and conditions of the permit and request copies of records or copy records required by the permit; and
 - (ii) To sample or monitor at reasonable times substances or parameters to assure compliance with the permit or applicable requirements;
- (10) Compliance plan and compliance certification submittal requirements pursuant to section 24.0522.
 - (11) other provisions to assure compliance with all applicable requirements; and
 - (12) Any other provision the Commission imposes to further limit the construction and operation of the source. These conditions may include restrictions, control requirements, or

performance standards normally reserved for air pollution emission sources with larger capacities than the air pollution emission source being permitted. In determining whether to impose more restrictive conditions, the Commission shall consider the relevant circumstances of each individual case, including the availability of a reasonable control technology, cleaner fuels, or a less polluting operating process; the consideration of the existing air quality and the resulting degradation; the protection of the public health, welfare and safety; and any information, assumptions, limitations, or statements made in conjunction with a permit application.

History: 2005

24.0529 Permit Term or Duration.

An air pollution control permit shall be issued or renewed for a fixed term of five years unless the owner or operator of the source requests a shorter term, or the Commission determines that a shorter term is warranted.

History: 2005

24.0530 Inspections.

- (a) Every source required to obtain a permit pursuant to these Standards and Regulations shall be subject to regular inspections at least every six months for compliance with all applicable requirements, these rules, and the terms and conditions of a permit. Such inspections shall be conducted by any duly authorized officer, employee or representative of the Commission and shall take place at any reasonable time. No person shall refuse entry or access to any authorized representative of the executive secretary who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such inspection.
- (b) Inspections may include emissions testing, monitoring, sampling and on-site inspections of facilities, equipment, practices, operations, or records required to be maintained according to the terms and conditions of an owner or operator's permit. Emissions sources found to be

in violation of an applicable requirement, these Standards and Regulations, or any terms and conditions of a stationary air pollution source permit shall immediately take all appropriate actions to achieve compliance and shall be subject to all enforcement penalties and remedies provided by, or incorporated by reference in, these Standards and Regulations.

History: 2005

24.0531 Federally Enforceable Terms and Conditions.

Terms and conditions included in a stationary air pollution source permit, including any provision designed to limit a source's potential to emit, are federally enforceable unless such terms, conditions, or requirements are specifically designated as not federally enforceable. Terms and conditions in a stationary air pollution source permit related to applicable requirements (including limits on a source's potential to emit) shall in all cases be federally enforceable. Those terms and conditions which are left undesignated shall become federally enforceable upon permit issuance provided the USEPA Administrator does not object during the 45-day review pursuant to section 24.0533.

History: 2005

24.0532 Transmission of information to the USEPA.

- (a) If the air pollution emission source is a federal oversight source:
 - (1) The executive secretary shall submit to the USEPA Administrator a copy of each proposed and final stationary air pollution source permit, including administrative permit amendments;
 - (2) The owner or operator shall simultaneously submit to the USEPA Administrator a copy of all stationary air pollution source permit applications, including any applications for renewals and amendments reflecting modifications submitted to the Commission;
 - (3) By agreement with the USEPA Administrator or pursuant to federal regulation, the executive secretary may

waive the requirements of this section, or submit summaries for specific categories of non-major air pollution emission sources.

- (b) For all other stationary air pollution sources, the Commission may at any time require the owner or operator to submit to the USEPA Administrator a copy of any permit compliance certification, or records required to be kept under the permit.
- (c) The Commission shall maintain records on all air pollution control permit applications, compliance plans, proposed and final permits, and other relevant information for a minimum of five years.

History: 2005

24.0533 USEPA oversight.

If an air pollution emission source is a federal oversight source, the Commission shall abide by the following practices and restrictions:

- (1) Upon program approval, the Commission shall not issue a stationary air pollution source permit, permit renewal, or permit amendment for a non-minor modification, if the USEPA Administrator objects to its issuance in writing within forty-five days of receipt of the proposed permit and all necessary supporting information.
- (2) Upon program approval, the Commission shall submit to the USEPA Administrator an amended proposed stationary air pollution source permit within 180 days after receipt of any written objection from the USEPA Administrator. If the Administrator's objections are not resolved within 180 days, USEPA shall issue a permit under 40 CFR Part 71.

History: 2005

24.0534 Administrative permit amendment.

- (a) The Commission, on its own initiative or upon written request from the owner or operator of a stationary air pollution emissions source, may issue an administrative permit amendment.
- (b) Except for a request to consolidate two or more air pollution control permits into one or to change ownership or operation control, an owner or operator requesting an administrative permit

amendment may make the requested change immediately upon submittal of the request.

- (c) Within sixty days of receipt of a written request for an administrative permit amendment, the Commission shall take final action on the request and may amend the permit without providing notice to the public provided the director designates any such permit amendments as having been made pursuant to this section.
- (d) For federal oversight sources, the Commission shall submit a copy of the administrative permit amendment to USEPA.

History: 2005

24.0535 Permit modifications.

- (a) Upon receipt of an application for a permit modification which does not qualify as an administrative permit amendment pursuant to section 24.0534 the Commission shall process the application according to whether the requested permit modification is minor or non-minor.
- (b) In determining whether a requested modification is minor or non-minor, the Commission shall use the following criteria:
 - (1) Minor permit modifications are those which:
 - (A) Do not violate any applicable requirement;
 - (B) Do not involve non-minor changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
 - (C) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
 - (D) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement that the source has assumed to avoid an applicable

requirement to which the source would otherwise be subject, including:

- (i) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the federal Clean Air Act, 42 U.S.C. 7401 to 7515; and
 - (ii) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Clean Air Act;
- (E) Are not required by these standards and regulations to be processed as a non-minor modification;
- (F) Are not modifications under any provision of title I of the Clean Air Act; Notwithstanding subparagraphs (A) through (F) of this section, minor permit modifications procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such modifications procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by USEPA.
- (2) Non-minor permit modifications are those which do not qualify as minor permit modifications or administrative permit amendments and which:
- (A) involve any relaxation of permit monitoring terms and conditions;
 - (B) involve any relaxation of reporting or recordkeeping terms and conditions;
 - (C) involve violations of any applicable requirement(s); or
 - (D) involve any relaxation of permit emissions standards or limitations.

24.0536 Permit modification procedures.

- (a) Applications for minor permit modifications shall be processed as follows:
- (1) An application for a minor permit modification shall be submitted to the Commission and shall include the following:
 - (A) A description of the change requested, the emissions resulting from the change, and any applicable requirements that will apply if the change occurs;
 - (B) The source's suggested draft permit;
 - (C) Certification by a responsible official, consistent with section 24.0504 of these regulations, that the proposed modification meets the criteria for use of the minor permit modification procedures and a request that such procedures be used; and
 - (D) Completed forms for the permitting authority to use to notify USEPA as required pursuant to section 24.0532.
 - (2) Within five working days of receipt of a complete permit modification application, the ASEPA shall promptly notify USEPA of the requested modification;
 - (3) The Commission shall not issue a final permit modification until USEPA has reviewed the modification application for 45 days or until USEPA has notified the Commission that it will not object to issuance of the requested modification, whichever comes first. The Commission shall, within 90 days of receipt of a completed permit modification application or 15 days of USEPA's 45-day review period,
 - (A) issue the permit modification as proposed;
 - (B) Deny the permit modification application;

History: 2005

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the non-minor modification procedures; or

(D) Revise the draft permit modification and transmit to USEPA the new proposed permit modification as required by these regulations.

(4) The applicant for a minor permit modification may make the change(s) proposed in its application immediately after it files its application. After making such change(s) and until the Commission takes any of the actions specified in subsections (a)(1) – (a)(3), the applicant must comply with both the applicable requirements governing the change and the proposed permit terms and conditions, but the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the applicant fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against.

(b) Applications for permit modifications deemed non-minor shall meet all of the requirements set forth in sections 24.0522, 24.0525, 24.0526, 24.0538 as they apply to permit issuance and to permit renewal. Final permit modifications shall issue within nine (9) months of the receipt by the Commission of a complete application.

History: 2005

24.0537 Emergency Provision.

(a) An emergency constitutes an affirmative defense to any action brought for noncompliance with any technology-based emission limitation, if it can be demonstrated to the executive secretary through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and the owner or operator of the air pollution emission source can identify the cause or causes of the emergency;

(2) the permitted facility was at the time being properly operated;

(3) During the period of the emergency, the owner or operator of the air pollution emission source took all reasonable steps to minimize levels of emission that exceeded the emission limitations or other requirements in the stationary air pollution source permit; and

(4) The owner or operator of the air pollution emission source submitted notice of the emergency to the executive secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken. Such notice shall satisfy the prompt reporting of deviations pursuant to section 24.0506;

(b) In any proceedings for enforcement action, the owner or operator of the air pollution emission source seeking to establish the occurrence of an emergency has the burden of proof.

(c) This emergency provision is in addition to any emergency or upset provision in any applicable requirement.

History: 2005

24.0538 Permit termination, suspension, reopening, and amendment.

(a) The Commission, on its own motion or on the petition of any person, may terminate, suspend, reopen, or amend any permit if, after affording the permittee an opportunity for a hearing in accordance with section 24.0514, the Commission determines that:

(1) the permit contains a material mistake made in establishing the emissions limitations or other requirements of the permit;

(2) Permit action is required to assure compliance with the requirements of the Clean Air Act; the Environmental Quality Act, or these Standards and Regulations;

- (3) Permit action is required to address additional requirements of the Clean Air Act; the Environmental Quality Act, or these Standards and Regulations;
 - (4) There is a violation of any condition of the permit;
 - (5) The permit was obtained by misrepresentation or failure to disclose fully all relevant facts;
 - (6) The source is not constructed or operated in accordance with the application for the air pollution control permit and any information submitted as part of the application;
 - (7) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;
 - (8) More frequent monitoring or reporting by the permittee is required; or
 - (9) Such is in the public interest. In determining the public interest, the Commission shall consider the environmental impacts of the proposed action, any unavoidable adverse environmental impacts, alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, any irreversible and irretrievable commitments of resources which would be involved in the proposed action, and any other factors which the Commission shall prescribe by rule; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.
- (b) The Commission shall reopen and amend a permit if it determines that any one of the following circumstances exists:
- (1) Additional applicable requirements pursuant to the Clean Air Act or these Standards and Regulations become applicable to a major air pollution emission source with a remaining permit term of three or more years. Such permit reopening shall be completed not later than eighteen months after promulgation or adoption of the applicable requirement. No such permit reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the expiration date of the original permit or any of its terms and conditions has been extended pursuant to section 24.0525;
 - (2) the permit contains a material mistake or inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or
 - (3) The permit must be terminated, suspended, or amended to assure compliance with the applicable requirements.
- (c) Procedures to reopen and amend an air pollution control permit shall be the same as procedures which apply to initial permit issuance in accordance with section 24.0525 and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.
- (d) On the reopening of a permit the Commission shall provide written notification to the permittee indicating the basis for reopening at least thirty days prior to the reopening date, except that the Commission may provide a shorter time period if it is determined that immediate action on the reopening is required to prevent an imminent peril to public health and safety or the environment;
- (e) If requested by the executive secretary, the owner or operator of an air pollution emission source shall submit a permit application or information related to the basis of the permit reopening or those provisions affected by the reopening within thirty days of receipt of the permit reopening notice. An extension of the application submittal may be granted by the executive secretary if the owner or operator can provide adequate written justification for such an extension.

- (f) Upon program approval, if the USEPA Administrator notifies the Commission of any cause to terminate, suspend, reopen, or amend a permit issued to a federal oversight source, the Commission shall submit to the USEPA Administrator within 100 days of receipt of such written notification, or within such other times as required by the USEPA, a proposed determination of termination, suspension, reopening, or amendment as appropriate.
- (g) Upon program approval, if the USEPA Administrator objects to the Commission's proposed determination in subsection (f), the Commission shall terminate, suspend, reopen, or amend the permit in accordance with the USEPA Administrator's objection within 180 days from receipt of the written objection specified in subsection (f). If the Commission fails to reissue the permit within this 180 days, USEPA will terminate, modify, or revoke and reissue the permit under 40 CFR Part 71 after providing the permittee and the public with notice and opportunity for comment.

History: 2005

24.0539 Public Participation.

- (a) If the air pollution emission source is a federal oversight source, the executive secretary shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment on draft permits for all permits except administrative permit amendments and permit amendments reflecting minor modifications. Any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted. The executive secretary shall have discretion whether to grant a public hearing.
- (b) For all other air pollution emission sources, the executive secretary, at his sole discretion when considering an application for any stationary air pollution source permit, except administrative permit amendments, may provide for public notice, including the method by which a public hearing can be requested, and an opportunity for

public comment if the executive secretary believes that public comment would aid in the Commission's decision. If a public comment period is provided, any person requesting a public hearing shall do so during the public comment period. Any request from a person for a public hearing shall indicate the interest of the person filing the request and the reasons why a public hearing is warranted.

- (c) Procedures for public notice, public comment periods, and public hearings shall be as follows:
 - (1) The executive secretary shall make available for public inspection in at least one location:
 - (A) Information on the subject matter;
 - (B) Information submitted by the applicant, except for confidential information pursuant to section 24.0505;
 - (C) The Commission's analysis and proposed action; and
 - (D) Other information and documents determined to be appropriate by the executive secretary;
 - (2) Notification of a public hearing shall be given at least thirty days in advance of the hearing date;
 - (3) A public comment period shall be no less than thirty days following the date of public notice, during which time interested persons may submit to the executive secretary written comments on:
 - (A) The subject matter;
 - (B) The application;
 - (C) Commission's analysis;
 - (D) The proposed actions; and
 - (E) Other considerations as determined to be appropriate by the executive secretary;
 - (4) Notification of a public comment period or a public hearing shall be made:

- (A) by publication in a newspaper of general circulation which is printed and issued at least twice weekly; and times the information will be available for inspection;
 - (B) to persons on a mailing list developed by the executive secretary, including those who request in writing to be on the list; and
 - (C) If necessary by other means to assure adequate notice to the affected public;
- (5) Notice of public comment and public hearing shall identify:
- (A) The affected facility;
 - (B) The name and address of the permittee;
 - (C) The name and address of the agency of the permitting authority processing the permit;
 - (D) The activities involved in the permit action;
 - (E) The emissions change involved in any permit modification;
 - (F) The name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials including any compliance plan, and monitoring and compliance certification reports, and all other material available the Commission which are relevant to the permit decision, except for information which is determined to be confidential;
 - (G) A brief description of the comment procedures;
 - (H) The time and place of any hearing that may be held, including a statement of procedures to request a hearing if one has not already been scheduled; and
 - (I) The availability of the information listed in paragraph (1), and the location
- (6) The executive secretary shall maintain a record of persons who make comments and the issues raised during the public participation process and shall provide this information to USEPA upon request and to other persons in accordance with 24.0505(c)(4).

History: 2005

24.0540 General Fee Provisions.

- (a) Every owner or operator of an air pollution emission source shall pay annual fees as set forth in section 24.0541.
- (b) Annual fees collected pursuant to these Standards and Regulations shall only be used to supplement the Stationary Air Pollution Source Fund pursuant to section 24.0543.
- (c) Annual fees for air pollution emission sources required by this chapter shall be submitted by check or money order made payable to the Stationary Air Pollution Source Fund and are not refundable.
- (d) Checks returned for any reason shall be considered a failure to pay. The returned checks are subject to an additional \$ 25 handling charge. If a returned check results in a late payment, the owner or operator shall be assessed a late payment penalty in accordance with section 24.0537

History: 2005

24.0541 Annual Fees.

- (a) Annual fees shall be paid in full within sixty days after the end of each calendar year and within thirty days after the permanent discontinuance of the air pollution emission source;
- (b) The executive secretary, upon written request from the owner or operator of an air pollution emission source, may extend the annual fee submittal deadline if the executive secretary determines that reasonable justification exists for the extension. The written request for an extension shall be submitted at least fifteen days

prior to the required submission due date, and include the following information:

- (1) Justification for the extension, including a showing that reasonable effort and resources have been and are being utilized in the calculation of annual emissions and the corresponding annual fee as calculated pursuant to this section;
 - (2) description of the problems being encountered and reasons for any delays in meeting the annual fee deadline;
 - (3) The current status of emission calculations; and
 - (4) The projected date of submitting the annual fee. If the executive secretary disapproves an extension for the annual fee submittal, the owner or operator shall pay the required annual fees within thirty days of receipt of the disapproval notification or the original submittal deadline, whichever is later. If the executive secretary approves an extension for the annual fee submittal, the owner or operator shall pay the required annual fees by the extended approval date. Any part of the annual fee that is not paid within the required time shall at once be assessed the late penalty fee pursuant to section 24.0537.
- (c) Annual fees due within sixty days after the end of each calendar year shall be based upon the calculated tons of regulated air pollutants emitted during the prior calendar year in which the annual fees are due.
- (d) Annual fees due within thirty days after permanent discontinuance of the air pollution emission source shall be based upon the calculated tons of regulated air pollutants emitted after the last calendar year for which annual fees were paid.
- (e) Annual fees shall be assessed for each ton of regulated air pollutant emitted by an air pollution emission source except for:
- (1) Carbon monoxide emissions;
 - (2) Fugitive emissions if fugitive emissions are not included in the applicable requirements or AP-42.
- (f) For the calendar year 2003 the dollar per ton charge shall be the base rate of \$18 per ton for each regulated air pollutant emitted by an air pollution emission source, and 10 times the base rate for each ton of hazardous air pollutants emitted by an air pollution emission source.
- (g) The calculated emissions in tons per year shall be determined by using the following parameters:
- (1) An emission factor derived from the allowable emission rate;
 - (2) The actual production, operating hours, amount of materials processed or stored, or fuel usage of the air pollution emission source during the prior calendar year the annual fees are due, as applicable; and
 - (3) If not already considered in the allowable emission rate, a percentage reduction factor based upon the efficiency of the air pollution control equipment. Other operating parameters of the air pollution emission source may be used in the fee calculation if approved by the executive secretary.
- (h) The allowable emission rate referenced in subsection (g)(1) is based upon the emission rate specified in an air pollution control permit or applicable requirement. If the allowable emission rate is not specified in the stationary air pollution source permit or applicable requirement, the appropriate AP-42 air pollutant emission factor shall be used to determine the calculated emissions in tons per year.
- (i) the parameters referenced in subsection (g)(2) shall be based upon verifiable documentation presented by the owner or operator of the air pollution emission source. If an owner or operator of an air pollution emission source cannot provide verifiable documentation on the parameters referenced in subsection (g)(2), the maximum allowable production, operating hours, amount of material processed or stored, or

fuel usage shall be used in calculating the total annual tonnage of regulated air pollutants emitted from the air pollution emission source. Any fraction of a ton calculated shall be rounded up to the next whole ton to obtain the annual tonnage of each regulated air pollutant subject to annual fees.

- (j) The percentage reduction factor referenced in subsection (g)(3) shall be based upon the percentage reduction provided by AP-42 or an applicable requirement. The executive secretary shall establish the appropriate percentage reduction factor, and may adjust the reduction factor based on actual performance of the air pollution control equipment.
- (k) Annual fees shall be calculated on fee worksheets furnished by the executive secretary. If a fee worksheet is not provided for a particular air pollution emission source, the owner or operator of an air pollution emission source shall provide the worksheet, showing the method, assumptions, emissions factors, and calculations used to obtain the calculated emission in tons per year, for each regulated air pollutant emitted.

History: 2005

24.0542 Penalties and Remedies.

- (a) Any person who violates any provision of these Standards and Regulations or any term or condition of a permit shall be subject to the procedures, penalties and remedies provided in sections 24.0150 through 24.0166 ASCA.
- (b) If any part of the annual fee is not paid within thirty days after the due date, a late payment penalty of five per cent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each calendar month during which any part of the annual fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five per cent of the then unpaid balance shall accrue and be added thereto.
- (c) If any annual fee, including the late payment penalty required by these Standards and Regulations is not paid in full within thirty days after the due date, the director may terminate or suspend any or all of the owner or operator's

stationary air pollution source permits, after affording the opportunity for a hearing in accordance with 24.0505.

- (d) If any application for permit renewal is submitted after the due date, a late penalty of ten per cent of the permit application fee shall at once accrue and be added thereto. Thereafter, after every twenty day period during which any part of the application fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of ten per cent of the then unpaid balance shall accrue and be added thereto.
- (e) If an application for permit renewal is submitted more than thirty days after the due date, the Commission may delay issuance of the permit renewal beyond the expiration date of the existing permit, thereby suspending permission to the owner or operator of the air pollution emission source of any rights granted in the air pollution control permit to emit air pollution.

History: 2005

24.0543 Stationary Air Pollution Source Fund.

- (a) All permit annual emission fees, fines, penalties, bail forfeitures, grant funding, and other funds collected or received into the Stationary Air Pollution Source Fund shall be used solely for the direct and indirect costs of administration and implementation of the permit program under ASCA 24.0115, and for providing staff and resources to: assist permit applicants with the applications process; review and act upon permit applications; write permits; implement and enforce permit conditions including legal support; prepare guidance and rules; prepare emissions inventories; monitor air quality; inspect facilities to ensure compliance and offer assistance with pollution prevention alternatives, provide technical assistance to permittees; administer the fund, and any other duties needed to administer the provisions of the Environmental Quality Act and these standards and regulations.
- (b) The executive secretary shall maintain independent records and accounts of all revenues

and expenditures of the air pollution control special fund.

- (c) By February 1 of each year the executive secretary shall determine what base rate shall be used to calculate annual fees for the following calendar year pursuant to section 24.0541. The base rate shall be set such that projected revenues generated from annual fees shall equal the total projected program cost, including a contingency of 10%, minus the total projected revenues from all revenue sources except for annual fees (i.e. application fees, penalties, grant funding, etc.) for that year. The base rate shall be calculated in dollars per ton of pollutant and shall be rounded up to the next whole dollar.
- (d) If the executive secretary determines that the base rate for the following calendar year must be raised by more than \$1 per ton of pollutants above the current year's base rate or if the base rate shall be raised above \$10, the executive secretary shall provide for public notice, including the method by which a public hearing can be requested, and an opportunity for public comment. The applicable procedural requirements of 24.0505 shall be used for public notice, public comment periods, and public hearings.

History: 2005

24.0550 Source applicability.

- (a) The standards of performance requirements of this Part are additional requirements for considering an application for an air pollution control permit required by Part III.
- (b) No air pollution emission source or modification to which the requirements of this Part shall apply shall begin or continue construction, reconstruction, modification, relocation, or operation without an air pollution control permit which states that the air pollution emission source or modification would meet the requirements of this Part.

History: 2005

24.0551 New source performance standards.

- (a) Each owner or operator of an air pollution emission source shall comply with all applicable

requirements of 40 CFR Part 60, entitled "Standards of Performance for New Stationary Sources."

- (b) At such times that USEPA requires owners and operators of solid waste incinerators subject to the permitting requirements of section 129(e) of the Clean Air Act to apply for and obtain federal operating permits under the provisions of 40 CFR Part 71, a copy of the federal permit application shall be sent concurrently to the Commission.

History: 2005

24.0560 Source Applicability- permit requirement.

- (a) The provisions of this Chapter are applicable to any air pollution emission source which emits or has the potential to emit any hazardous air pollutant in any quantity. No air pollution emission source or modification to which the requirements of this Chapter apply shall begin or continue construction, reconstruction, modification, relocation, or operation without a stationary air pollution source permit which states that the air pollution emission source or modification will meet the requirements of this Part.
- (b) Every owner or operator of an air pollution emission source shall comply with all applicable requirements of 40 CFR Part 61, entitled "National Emission Standards for Hazardous Air Pollutants," as amended in subsection (d). For purposes of this Part, the term "hazardous air pollutant" shall refer to the pollutants set forth at 40 CFR Part 61, section 1.
- (c) Every owner or operator of an air pollution emission source shall comply with all applicable requirements of 40 CFR Part 63, entitled "National Emission Standards for Hazardous Air Pollutants for Source Categories."
- (d) Word and phrase substitutions for 40 CFR Part 61: "Administrator" shall mean the Commission, except in 40 CFR 61 sections 150(a)(4), 152(b)(3), and 154(d).
- (e) At such times that USEPA requires owners and operators of major sources of hazardous air

pollutants to apply for and obtain federal operating permits under the provisions of 40 CFR Part 71, a copy of the federal permit application shall be sent concurrently to the Commission.

History: 2005

TITLE 24 – CHAPTER 06 – PESTICIDE REGULATION

Sections

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24.0601 Words in singular form.

Words used in the singular form in this chapter shall include the plural, and vice versa as the case may be.

History: Rule 3-85, eff 9 Jul 85, § 1.

24.0602 Terms defined and construed.

All terms used in this chapter shall have the meanings set forth for such terms in the Act. In addition, as used in this section the following terms shall have the meanings stated below:

- (a) “Act” means the American Samoa Pesticide Act of 1979.
- (b) “Agricultural commodity” means any plant or part thereof, or animal or animal. Products, produced by a person (including farmers,

ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

- (c) “Certification” means the recognition by a certifying agency that a person is competent and thus authorized to use or supervise the use of restricted use pesticides.
- (d) “Certification standard” means a requirement for certification.
- (e) “Common exposure route” means a likely way (oral, dermal, respiratory) by which a pesticide may reach and/or enter the organism.
- (f) “Forest” means a concentration of trees and related vegetation in nonurban areas sparsely inhabited by and infrequently used by humans, characterized by natural terrain and drainage patterns.
- (g) “Hazard” means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation: the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.
- (h) “Host” means any plant or animal on or in which another lives for nourishment, development, or protection.
- (i) “Nontarget organism” means a plant or animal other than the one against which the pesticide is applied.
- (j) “Ornamental” means trees, shrubs, and other plantings in and around habitations generally, but not necessarily located in urban and suburban areas, including residences, parks, streets, retail outlets, industrial and institutional buildings.
- (k) “Pesticide vendor” means any person selling pesticides for general and/or restricted use.
- (l) “Practical knowledge” means the possession of pertinent facts and comprehension together with

the ability to use them in dealing with specific problems and situations.

- (m) “Protective equipment” means clothing of any other materials or devices that shield against unintended exposure to pesticides.
- (n) “Qualified pesticide sales manager” means a person in charge of a sales outlet of restricted use pesticides and who has successfully passed an examination to be certified for that position.
- (o) “Regulated pest” means a specific organism considered by a state or federal agency to be a pest requiring regulatory restrictions, regulations or control procedures in order to protect the host, man and/or his environment.
- (p) “Sales outlet” means a geographical location within the territory where a stock of restricted use pesticides is kept for sale and where records of such sales are kept.
- (q) “Toxicity” means the property of a pesticide to cause any adverse physiological effects.

History: Rule 3-85. eff 9 Jul 85. § 2.

24.0603 Administration.

The director is authorized to take such action as may be necessary in the administration and enforcement of the Act and this chapter.

History: Rule 3-85. eff 9 Jul 85. § 3.

24.0610 Licensing.

- (a) All pesticides used and sold in American Samoa must be registered by the EPA.
- (b) All pesticides used and sold in American Samoa must be licensed with the Department of Agriculture, American Samoa government.
- (1) Application for licensing of a pesticide with ASG must be submitted by a pesticide vendor in writing on forms provided by the Department of Agriculture to the director with copies of labels and labelling at such formulations that would be sold to the public.

History: Rule 3-85. eff 9 Jul § 4.

24.0611 Label requirements.

- (a) All pesticides used and sold in American Samoa shall bear a label conforming to the information required by 40 CFR 162.10.
- (b) All statements, words and other information required to appear on the label or labelling of any pesticide shall be in the English language: provided, however, that the director may require the use of the Samoan language version of the label or labelling in addition to English.

History: Rule 3-85. eff 9 Jul 85. § 5.

24.0612 Experimental use permits.

- (a) Because of the delicate nature of our island territory pesticides not registered with EPA will not be considered for experimental use permits at any time under any circumstances.
- (b) Issuance at experimental use permits shall be confined to pesticides registered by EPA for a use nor previously approved in the registration of the pesticide (SLN). These permits issued by the director shall be valid for a period not longer than one year.
- (c). The issuance of an experimental use permit and the subsequent experimentation shall comply with provisions as specified by 40 CFR 172 and its subparts.

History: Rule 3-85. 9 Jul 85. § 6.

24.0613 Restricted use pesticide dealer license.

- (a) No person shall sell a restricted use pesticide unless such person has obtained a license from the Department of Agriculture which shall expire on December 31 of each year and shall be renewed on or before January 1 of each year. A license shall be required for each sales outlet located within the territory. Application for a dealer license shall be accompanied by a \$25 annual license fee for each printing. Sales outlet and a fee of \$10 for each branch sales outlet and shall be on a form prescribed by the director and shall include the name and address of the applicant, the location and address of principal and all branch sales outlets and the names of the qualified pesticide sales manager at each sales outlet.

- (b) All sales outlets of restricted use pesticides shall have a qualified pesticide sales manager. The names of such qualified sales manager will be submitted together with the application for a dealer license for the sales outlet. The director will be notified forthwith of any changes of personnel in this position.
- (c) Persons seeking to be certified as a qualified, pesticide sales manager shall apply for examination on forms provided by the director. To be certified, an applicant shall pass a written examination at a time and place designated by the director. Examinations shall test the applicant's knowledge of pesticide laws and regulations, pesticide hazards, proper usage, safe storage and distribution, and disposal methods.

History: Rule 3-85. eff Jul 85. § 7.

24.0614 Dealer's records and reports of restricted use pesticide sale.

- (a) Licensed dealers shall keep a record of each sale of restricted use pesticides at each sales outlet on forms provided by the director. Such records will be prepared in duplicate and shall show the name and address or purchaser date of sale, identity of the formulation or brand sold and its quantity, certification number of the purchaser intended use, and selling clerk's signature.
- (b) The original copy of the sales record required under subsection (a) of this section shall be submitted to the director at the end of each month and the duplicate copy shall be kept at the sales outlet where the sales were made for a period of one year.

History: Rule 3-85. eff 9 Jul 95, § 8.

24.0615 Storage display and sales of pesticides.

- (a) No pesticide shall be stored, displayed, placed for sale, or transported under conditions where food and food containers, feed or any other products are likely to become contaminated and may create a hazard or cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects and aquatic life.
- (b) Pesticides labeled for pest control in lawns and gardens and other outdoor uses shall be offered for sale only in garden supply centers or in other

retail outlets that have separate and distinct sections for sale. Such lawn and garden pesticide products shall also be displayed and sold in a separate section from other home and garden pesticide products formulated and registered for use inside the home. A prominent sign with legible bold print not less than one-half inch in height to read "PESTICIDE PRODUCTS FOR GARDEN AND LAWN" or "OUTDOOR USE ONLY IT IS UNLAWFUL AND MAY BE HAZARDOUS TO USE INSIDE YOUR HOME", shall be posted in the area where such lawn and garden pesticide products are displayed and sold.

- (c) After December 31, 1980, no restricted use pesticides shall be sold to any person who is not certified as an applicator.

History: Rule 3-85, eff 9 Jul 85. § 9.

24.0616 Disposal of pesticides and empty containers.

- (a) Pesticides may not be disposed of so as to create hazard. The owner of such pesticides shall notify or contact the director whenever information or assistance on the proper means of disposal is needed.
- (b) Empty containers of pesticides shall be disposed of in a manner consistent with its label or labelling.

History: Rule 3-85. eff 9 Jul 85. § 10.

24.0617 Restricted use pesticides.

- (a) Any pesticide or pesticide formulation classified as a restricted use pesticide by the EPA shall be considered as such in this chapter; however, the director under the provision of 24.1207 of the Act, may declare additional pesticides for restricted use within the territory.
- (b) The director shall publish a list of all pesticides or pesticide formulations classified for restricted use and amend the list whenever necessary. Such list shall be made available to the public.

History: Rule 3-85, eff 9 Jul 85, § 11

24.0620 Certification of applicators for restricted pesticide use.

The following classes, procedures, conditions and standards for certification shall apply:

- (a) Classes of Applicators.
 - (1) Commercial Applicators.
 - (A) Agricultural Pest Control
 - (i) Plant This category includes commercial applicators using or supervising the use pesticides in production of agricultural crops including but not limited to taro, bananas, tobacco, yams, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and noncrop agricultural lands
 - (ii) Animal. This category includes commercial applicators using or supervising the use of restricted use pesticides on animals, including but not limited to beef cattle, dairy cattle, swine sheep, horses, goats, poultry and other livestock and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves on: as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.
 - (B) Forest Pest Control This category includes commercial applicators using or supervising the use of restricted use pesticides in forests, forest nurseries and forest seed-producing areas.
 - (C) Ornamental and Turf Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs flowers and turf.
 - (D) Seed Treatment. This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.
 - (E) Aquatic Pest Control. This category includes commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in subdivision H of this subsection.
 - (F) Right-of-Way Pest Control This category includes commercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric powerlines, pipelines, wells and other similar areas
 - (G) Industrial. Institutional. Structural and Health Related Pest Control. This category includes commercial applicators using or supervising the use of restricted use pesticides in on, or around food handling establishments, human dwellings, including warehouses and any other structures and adjacent area, public or private: and for the protection of stored, processed or manufactured products.
 - (H) Public Health Pest Control. This category includes territorial, federal or other governmental employees using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance.
 - (I) Regulatory Pest Control. This category includes territorial, federal or other governmental employees using or supervising the use of restricted use pesticides in the control of regulated pests.
 - (J) Demonstration and Research . Pest Control.

- (i) This category includes (a) individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration, and (b) persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides. Included in the first group are such persons as extension specialists, commercial representatives demonstrating pesticide products and those individuals demonstrating methods used in public programs. The second group includes territorial, federal and commercial persons conducting field research on or utilizing restricted use pesticides.
 - (ii) Private Applicators. This class includes certified persons using or supervising the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of person.
- (b) Standards for Certification of Commercial Applicators.
- (1) Determination of Competency. Competence in the use and handling of pesticides shall be determined upon written examination and as appropriate, upon demonstration based upon standards which meet those set forth below.
 - (2) General standards for all categories of certified commercial applicators.
 - (A) All commercial applicators shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator’s certification and the following areas of competency.
 - (i) Label and Labelling Comprehension.
 - 1 The general format and terminology of pesticide label and labelling
 - 2 The understanding of instructions, warnings, terms symbols, and other information commonly appearing on the pesticide label.
 - 3 Classification of: the product general or restricted.
 - 4 Necessity for use consistent with the label.
 - (ii) Safety. Factors including:
 - 1. Pesticide toxicity and hazard to man and common exposure routes. 2 Common types and causes of pesticide accidents.
 - 1 Precautions necessary to guard against injury to applicators and other individuals in or near treated areas.
 - 2 Need for and use of protective clothing and equipment.
 - 3 Symptoms of pesticide poisoning.
 - 4 First -aid and other procedures to be followed in case of a pesticide accident.

- 5 Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken prevent children from having access to pesticides and pesticide containers.
- (iii) Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
- 1 Weather and other climatic conditions.
 - 2 Types of terrain, soil or other substrates.
 - 3 Presence of fish, wildlife and other non-target organisms
 - 4 Drainage patterns.
- (iv) Pests. Factors such as:
1. Common features of pest organisms and characteristics of damage needed for pest recognition.
 2. Recognition of relevant pests.
 3. Pest development and biology as it may be relevant to problem identification and control.
- (v) Pesticides. Factors such as:
1. Types of pesticides.
 2. Types of formulations.
 3. Compatibility, synergism, persistence and animal and plant toxicity of the formulation.
4. Hazards and residues associated with use.
 5. Factors which influence effectiveness or lead to such problems as resistance to pesticides.
 6. Dilution procedures.
- (vi) Equipment. Factors including:
1. Types of equipment and the advantages and limitations of each type.
 2. Uses, maintenance and calibration.
- (vii) Application techniques. Factors including:
1. Methods of procedure used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation.
 2. Relationship of discharge and placement of pesticide to proper use, unnecessary use, and misuse.
 3. Prevention of drift and pesticide loss into the environment.
- (viii) Laws and regulations. Applicable territorial and federal laws and regulations.
- (3) Special standards of competency for categories of commercial applicators. Commercial applicators in each category shall be particularly qualified with respect to the practical knowledge standards elaborated below.
- (A) Agricultural Pest Control.
- (i) Plant. Applicators must demonstrate practical knowledge of the crops grown and the

specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is also required concerning soil and water problems, preharvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

- (ii) Animal. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential since most animals will frequently be used as food. Further the applicator must know the relative hazards associated with such factors as formulation application techniques age of animal, stress and extent of treatment.
- (B) Forest Pest Control. Applicators shall demonstrate practical knowledge of types of forest, forest nurseries and seed production and pest involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands frequently include aquatic situations and harbor wildlife,

the applicator must demonstrate knowledge of control methods, which will minimize the possibility of secondary problems. Proper use of specialized equipment must be demonstrated especially as it may relate to meteorological factors and adjacent land use.

(C) Ornamental and Turf Pest Control.

Applicators should demonstrate a knowledge of problems associated with the production and Maintenance of ornamental trees, shrubs, plantings and turf, including cognizance of potential phytotoxicity, drift and persistence beyond the intended period of pest control. They must demonstrate special knowledge of hazards to humans, pets and other domestic animals associated with the restricted use pesticides utilized in this category.

- (D) Seed Treatment. Applicators should demonstrate knowledge of types of seeds that require chemical protection against pests and special understanding of factors such as seed coloration and carriers and surface active agents which influence pesticide binding and may affect germination. They must demonstrate knowledge of hazards associated with handling and misuse of treated seed such as inadvertent introduction of treated seeds into food and feed use channels, as well as proper disposal of unused treated seeds.

- (E) Aquatic Pest Control. Applicators should demonstrate special understanding of the secondary effects which can be caused by in proper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. Certified commercial applicators should demonstrate special awareness of the possibility of oxygen depletion and an understanding of

possible pesticide effects on fish, birds, beneficial insects and desirable plant and other organisms which may be present in aquatic environments. They should also demonstrate an understanding of limited area application.

(F) Right-of-Way Pest Control. Applicators should demonstrate specific knowledge of a wide variety of environments since rights-of-ways can traverse many different terrains including waterways. They should demonstrate thorough knowledge of problems of runoff, drift, and excessive foliage destruction and should be able to immediately identify target organisms. They should demonstrate special knowledge of the nature of herbicides.

(G) Industrial, Institutional, Structural and Public Health Related Pest Control. Applicators must demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulations appropriate for their control, and methods of application that avoid contamination of food, damage and contamination habitat and exposure of people and pets. Since human exposure, including babies, children, and pregnant women, and elderly people is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health related pest control may involve outdoor applicators, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this activities. (H) Public Health Pest Control. Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and

influences application programs. A wide variety of pests involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employments of such nonchemical control methods as sanitation, waste disposal, and drainage.

(I) Regulatory Pest Control. Applicators shall demonstrate practical knowledge of regulated pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the territory where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

(J) Demonstration and Research Pest Control. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum or pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide organism interactions and the importance of

integrating pesticide use with other control methods.

(c) Standards for certification of private applicators.

(1) Competence in the use and handling of pesticides by a private applicator will be determined by procedures set forth below. A private applicator must show that he possesses a practical knowledge of operations; proper storage, use, handling and disposal of the pesticides and containers; and his related legal responsibility. This practical knowledge includes ability to:

- (A) Recognize common pests to be controlled and damage caused by them.
- (B) Read and understand the label and labeling information, including the common name of pesticides he applied; pest(s) to be controlled, timing and methods of application; safety precautions and preharvest or re-entry restrictions; and any specific disposal procedures.
- (C) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.
- (D) Recognized local environmental situations that must be considered during application to avoid contamination.
- (E) Recognized poisoning symptoms and procedures to follow in case of a pesticide accident.

(2) Competence will be determined by written examinations.

(d) Commercial Applicator Recordkeeping Requirements. Commercial applicators in the categories (A) through (J) shall keep records of restricted use pesticides applied on every jobsite of their operation. Such records shall be made available for inspection to the director at his request. Recordkeeping information shall include the items listed in 24.1230, (c), (1)-(12) of the Act.

History: Rule 3-85, eff 9 Jul 85, § 12.

24.0621 Conditions and limitations on applications of restricted use pesticides.

- (a) No person shall apply a restricted use pesticide by aircraft except by a special permit issued by the director.
- (b) No person shall apply a restricted use pesticide within 20 feet of a water well, stream or any natural body of water except by a special permit issued by the director with the approval of the Environmental Quality Commission after concurrence of the Water Division of the Public Works Department and the Director of Health.

History: Rule 3-85, eff 9 Jul 85, § 13.

24.0622 Enforcement.

- (a) Inspections and Examinations.
 - (1) The director or his duly designated agent is authorized to enter any place or conveyance where pesticides or devices are manufactured, stored, packed, delivered for transportation, transported offered for sale or sold, and to inspect and/or to take samples of such pesticides and devices.
 - (2) The director or his duly designated agent is authorized to enter any place where restricted use pesticides are sold or used to examine the application techniques and records that are required to be kept.
- (b) Notice of Apparent Violation.
 - (1) If from an examination or inspection, a pesticide or device appears to be in violation of the Act of this chapter, a notice in writing shall be sent to the person against whom legal action is contemplated, giving

him an opportunity to offer such written explanation as he may desire. The notice shall state the manner in which the sample fails to meet the requirements of the Act or this chapter.

- (2) Any such person may, in addition to his written reply to such notice, file with the director within 20 days of receipt of the notice a written request for a hearing in connection therewith.
- (c) “Stop-sale” and “Removal from Sale” Orders.
 - (1) The director or his designated agent is authorized to issue “stop-sale” and “removal from sale” notices as to any pesticide or device which violates or fails to comply with the provisions of the Act or this chapter and may place written or printed “stop-sale” or “removal from sale” notices on any such pesticide or device.
 - (2) Upon receipt of such orders, the vendor shall correct the violation and effect full compliance therewith. Such articles shall not hereafter be sold, offered for sale, transferred or disposed of except upon authorization by the director, or his designated agent.
 - (3) No person shall remove, deface or tamper with any “stop-sale” or “removal from sale” notices.
- (d) Seizures.
 - (1) The director or his designated agent may seize any pesticide or device that is distributed, sold, offered for sale, transported or delivered for transportation in violation of the Act or this chapter.
 - (2) No notice or hearing shall be required prior to such seizures of a pesticide or device.

History: Rule 3-85, eff 9 Jul 85, § 14.

24.0623 Out of state certificates.

Valid applicator certificates issued by certifying agencies of other states and territories of the United States or employees of the Government Agency Plan (GAP) will be honored as such for use in the territory

upon successful review of the local laws and regulations.

History: Rule 3-85, eff 9 Jul 85, § 15.

TITLE 24 – CHAPTER 07 – STORAGE TANKS

Sections

- 24.0701 Applicability.
- 24.0702 Definition.
- 24.0710 Performance standards for new UST systems.
- 24.0712 Notification requirements.
- 24.0713 Permits required.
- 24.0720 Spill and overfill control.
- 24.0721 Operation and maintenance of corrosion protection.
- 24.0722 Compatibility.
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- 24.0724 Reporting and record keeping.
- 24.0730 Installation standards for new above ground storage tanks.
- 24.0740 General requirements.
- 24.0741 Requirements for petroleum UST systems.
- 24.0742 Methods of release detection for tanks.
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- 24.0744 Release detection recordkeeping.
- 24.0750 Leak reporting and correction.
- 24.0760 Financial Responsibility.
- 24.0770 Permanent closure and changes-in-service.
- 24.0771 Temporary closure.
- 24.0772 Assessing the site at closure or change-in-service.
- 24.0773 Closure records
- 24.0780 UST Certification of Compliance
- 24.0781 Enforcement.

24.0701 Applicability.

- (a) The requirements contained in this selection shall apply to all tanks, both above and below ground, which receive, store or distribute petroleum products or other chemicals except as provided in subsection (b) below.
- (b) Exemptions. The following are exempt from the provisions of this chapter:
 - (1) water tanks,

- (2) septic tanks,
- (3) publicly owned treatment works and
- (4) flow through process tanks.

History: Rule 9-88, eff 30 Aug 88, § 1.

24.0702 Definition.

As used in this chapter:

- (1) “Above ground storage tank” or “AST” means any one or combination of tanks (including the pipes connected thereto) that are used to contain an accumulation of petroleum products or other chemicals and the volume of which (including the volume of pipes connected thereto) is 90 percent or more above the surface of the ground.
- (2) “Cathodic Protection” means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.
- (3) “Commission” means the Environmental Quality Commission or its duly authorized representatives.
- (4) “Compliance certificate” includes a numbered decal, file copy of the decal, and plastic fill pipe tag as described in 24.0713 and 24.0780 of these regulations.
- (5) “Corrosion expert” means a person who, by reason of thorough knowledge of physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice control qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks.
- (6) “Dielectric material” means a material that does not conduct direct electrical current. Dielectric coating are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping)
- (7) “EPA” mean the federal Environmental Protection Agency.
- (8) “Existing tank system” means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:
 - (A) The owner or operator has obtained all local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,
 - (B) Either:
 - (i) A continuous on-site physical construction or installation program has begun; or,
 - (ii) The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial loss-for physical construction at the site or installation of the tank system to be completed within a reason time.
- (9) “Flow-through process tank” is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.
- (10) “Free product” refers to a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolve in water.)
- (11) “Impact /Fire valve” are valves located at the surface level of pump islands, beneath each dispenser. The valves are equipped with a spring-loaded mechanism that closes instantly if the top of the valve is sheared of. The valves are also fitted with a fusible link that melts if there is a fire at the pump island. Melting of the link causes the valve to snap shut.
- (12) “Implementing agency” means the American Samoa Environmental Protection Agency (ASEPA)
- (13) “Interstitial area” means the area between the tank, piping and the secondary containment. For double wall tanks, it is the area between the inner

and outer walls. For single wall tanks, it is the area between the tank and the vault or liner.

- (14) “Maintenance” means the normal operational upkeep to prevent an underground storage tank system from releasing product.
- (15) “Motor fuel” means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.
- (16) “New tank system” means any tank installed on or after December 22, 1988 and any tank required by 24.0750(5)(B) to meet the installation standards for new above ground storage tanks as appropriate. (See also “Existing tank system.”)
- (17) “Operational life” refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under 24.0770.
- (18) “Operator” means any person in control of, or having responsibility for, the daily operation of the tank system.
- (19) “OSHA” means the federal Occupational Safety and Health Administration.
- (20) “Owner” means any person who owns a tank used for storage, use or dispensing of a regulated substance.
- (21) “Person” means an individual, trust, firm, joint stock company, federal agency, corporation, state, territory, municipality, commission, political subdivision of a state or territory, interstate body, consortium, joint venture, or commercial entity.
- (22) “Petroleum” means crude oil, crude oil fractions, and refined petroleum fractions including motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils kerosene, and heating oils.
- (23) “Pipe” or “Piping” means a hollow cylinder or tubular conduit that is constructed of nonferrous materials.
- (24) “Publicly owned treatment works” means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is owned by a state, territory or municipality.
- (25) “Regulated substance” means:
- (a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and
 - (b) Petroleum, including crude oil or any fraction thereof that is liquid at Standard conditions of temperature and pressure (60 degrees Fahrenheit And 14.7 pounds per square inch absolute). The term “regulated substance” includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils,
- (26) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank or associated piping into groundwater, surface water, surface soils, or substance soils.
- (27) “Release detection” means determining whether a release of regulated substance has occurred from the tank system into the environment or into the interstitial space between the tank system and its secondary barrier or secondary containment around it.
- (28) “Repair” means to restore a tank or component of the tank system that has caused a release of product from the UST or AST system.
- (29) “Secondary containment” means a system installed around and underground storage tank that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled

tank) or excavation area (in the case of a liner or vault system) before the release can be detected. For an above ground storage tank it means a wall or dike impermeable to the material stored which will prevent the escape of the stored material outside the wall or dike.

- (30) “Septic tank” means a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.
- (31) “Tank” means a stationary device designed to contain an accumulation of regulated substances, which is constructed of non-earthen material (e.g., concrete, steel, plastic) that provide structural support.
- (32) “Underground storage tank” or “UST” means any one or combination of tanks (including the pipes connected thereto) that are used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This definition includes any tank situated in an underground area, if the tank is situated upon or above the surface of the floor.

History: Rule 9-88, eff 30 Aug 88, § 1; Rule 3-01, eff 30 Aug 01.

24.0710 Performance standards for new UST systems.

In order to prevent releases due to structural failure, corrosion, or spills and overfills for a long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

- (a) Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognize association or independent testing laboratory as specified below:

- (1) The tank is constructed of fiberglass-reinforced plastic; or

Note: The following industry codes may be used to comply with paragraph (a)(1) of this section: Underwriters Laboratories Standard 1316, “Standard for Glass- Fiber-Reinforced Plastic Underground Tanks for Petroleum Products”, Underwriter’s Laboratories of Canada CAN4-S615-M83, Standard for Reinforced Plastic Underground Tanks for Petroleum Products” or American society of Testing and Materials Standard D4021-86, “Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks.”

- (2) The tank is constructed of steel and cathodically protected in the following manner:
 - (i) The tank is coated with suitable dielectric material;
 - (ii) Field-installed cathodic protection systems are designed by a corrosion expert;
 - (iii) Impressed current systems are designed and allow determination of current operating status as required in 24.0721; and
 - (iv) Cathodic protection system are operated and maintained in accordance with 24.0721 or according to guidelines established by the implementing agency.

Note: The following codes and standards may be used to comply with paragraph (a)(2) of this section:

- (A) Steel Tank Institute “Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks”;
- (B) Underwriters Laboratories Standard 1746, “Corrosion

- Protection Systems For Underground Storage Tanks”;
- (C) Underwriters Laboratories Of Canada CAN4-S603-M85, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids,” and CAN4-G03. 1-M85, “Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids,” and CAN4-S631-M84, Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems”; or
- (D) National Association of Corrosion Engineers Standard RP-02- 85, “Control of External Corrosion on Metallic Buried, or Submerged Liquid Storage System,” and Underwriters Laboratories Standard 58 “Standard for Steel Underground Tanks for Flammable and Combustible Liquids.”
- (3) The tank is constructed of metal without additional corrosion protection measures provided that:
- (i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and
- (ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraphs (a)(3)(i) for the remaining life of the tank; or
- (4) The tank construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a)(1) through (a)(3) of this section.
- (b) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:
- (1) The piping is constructed of fiberglass-reinforced plastic; or
- Note: The following codes and standards may be used to comply with paragraph (b)(1) of this section:
- (A) Underwriters Laboratories Subject 971, “UL Listed Non-Metal Pipe”;
- (B) Underwriters Laboratories Standard 567, “Pipe Connectors for Flammable and Combustible and LP Gas”;
- (C) Underwriters Laboratories of Canada Guide UCL-107, “Glass Fiber Reinforced Plastic Pipe and fittings for Flammable Liquids”; and
- (D) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, “Flexible Underground Hose Connectors.”
- (2) The piping is constructed of steel and cathodically protected in the following manner:
- (i) The piping is coated with a suitable dielectric material;
- (ii) Field installed cathodic protection systems are designed by a corrosion expert;
- (iii) Impressed current systems are designed to allow determination of current operating status as required in 24.0721; and
- (iv) Cathodic protection systems are operated and maintained in accordance with 24.0721 or guidelines established by the implementing agency; or

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Note: The following codes and standards may be used to comply with paragraph (b)(2) of this section:

- (A) National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”;
- (B) American petroleum Institute Publication 1615, “Installation of Underground Petroleum Storage System”;
- (C) American Petroleum Institute Publication 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems”; and
- (D) National Association of Corrosion Engineers Standard RP-01-69 “Control of External Corrosion on Submerged Metallic Piping Systems

- (3) The piping is constructed of metal without additional corrosion protection measures provided that:
 - (i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
 - (ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section for the remaining life of the piping; or
- (4) The piping construction and corrosion protection are determined by the Implementing agency to be designed to prevent the release or threatened Release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b)(1) through (3) of this section.

(c) Spill and overfill prevention equipment.

(1) Except as provided in paragraph (c)(2) of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

- (i) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and
- (ii) Overfill prevention equipment that will:
 - (A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or
 - (B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high – level alarm.

(2) Owners operators are not required to use spill and overfill prevention equipment specified in paragraph (c)(1) of this section if:

- (i) Alternatives equipment is used that is determined by the implementing agency to be no less protective of human health and the environment than the equipment specified in paragraph (c)(1)(i) or (ii) of this section; or (ii) The UST system is filled by transfers of no more than 25gallons at one time.

(d) Secondary containment. Secondary containment may consist of:

- (1) a double walled tank, or
- (2) a pit lined with a low permeability barrier or synthetic liner, or
- (3) an impermeable vault, or
- (4) any other equally effective design approved in writing by the commission;

- (e) Emergency Shutoff.
- (1) To prevent the product from escaping if the dispenser is knocked over or dislocated by ground heave, an emergency shutoff method described in paragraph (e)(2) of this section must be installed for USTs with pressurized dispensing systems.
 - (2) Emergency shutoff methods. The owner and operator must equip the UST system with one of the following emergency shutoff methods:
 - (i) an impact/fire valve with the shear section of the valve installed within ½ inch of the pump. Anchor the entire assembly rigidly to the island to make certain the piping will break at the shear sections, and the spring and thermally actuated device functions to close the valve
 - (ii) any other equally effective method approved in writing by the implementing agency.
- (f) Installation. All tanks and piping must be properly installed in accordance with practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer’s instructions.

Note: Tank and Piping system installation practices and procedures described to comply with the requirements of paragraph (d) of this section:

- (i) American Petroleum Institute Publication 1615, “Installation of Underground Petroleum Storage System”; or
- (ii) Petroleum Equipment Institute Publication RP100, “Recommended Practices for Installation of Underground Liquid Storage “Systems”; or
- (iii) American National Standards Institute Standard B31.3 “Petroleum Refinery Piping,” and American National Standards Institute B31.4 “Liquid Petroleum Transportation Piping System.

- (g) Certification of Installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance on the UST notification form in accordance with 24.0712.
- (1) The installer has been certified by the tank and piping manufacturer’s; or
 - (2) The installation has been certified or licensed by the implementing agency; or
 - (3) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or
 - (4) The installation has been inspected and approved by the implementing agency; or
 - (5) All works listed in the manufacturer’s installation checklists has been completed; or
 - (6) The owner and operated have complied with another method for ensuring compliance with paragraph (f) of this section that is determined by the implementing agency to be no less protective of human health and environment.

History: Rule 3-01, eff 30 Aug 01.

24.0711 Upgrading of existing UST systems.

- (a) Alternatives allowed. Not later than December 22, 1998, all existing UST systems must comply with one of the following requirements:
- (1) New UST system performance standards under 24.0710;
 - (2) Upgrading requirements in paragraphs (b) through (d) of this section; or
 - (3) Closure requirements under Subchapter H, including applicable requirements for corrective action under Subchapter F.
- (b) Tank upgrading requirements. Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of

practice developed by a nationally recognized association or independent testing laboratory:

(1) Interior lining. A tank may be upgraded by internal lining if:

- (i) The lining is installed in accordance with the requirements of 24.0723, and
- (ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic system meets the requirements of 24.0710(a)(2)(ii),(iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

- (i) The tank is internally inspected and assessed to ensure that the tank is structurally sound free of corrosion holes prior to installing the cathodic protection system; or
- (ii) The tank has been installed for less than 10 years and is monitored monthly for release in accordance with 24.0742 (4) through (8); or
- (iii) The tanks has been installed for less than 10 years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of 24.0742 (3) and six (6) months following the first operation of the cathodic protection system; or
- (iv) The tank is assessed for corrosion holes by a method that is determined by the implementing agency to prevent releases in a manner that is no less protective of human health and environment than paragraphs (b)(2)(i) through (iii) of this section.

(3) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

- (i) The lining is installed in accordance with the requirements of 24.0723; and
- (ii) The cathodic protection system meets the requirements of 24.0710(a)(2)(ii),(iii),and (iv).

Note: The following codes and standards may be used to comply with this section:

- (A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";
- (B) National Leak Prevention Association Standard 631, "spill Prevention, Minimum 10 Years Life Extension of Existing Steel Underground tanks by Lining Without the Addition of Cathodic Protection";
- (C) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion On Metallic Buried, or Submerged Liquid Storage Systems": and
- (D) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;"

(c) Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognize association or independent testing laboratory and must meet the requirements of 24.0710(b)(2)(ii) and (iv)

Note: The codes and standards listed in note following 24.0710(b)(2) may be used to comply with this requirement.

(d) Spill and overflow prevention equipment. To prevent spilling and overfilling associated with

product transfer to the UST system, all existing UST systems must comply with new UST system spill and overflow prevention equipment requirements specified in 24.0710(c).

- (e) An emergency shutoff method described in 24.0710(e) of this subchapter.

History: Rule 3-01, eff 30 Aug 01.

24.0712 Notification requirements.

- (a) Any owner who brings an underground storage tank system in to use after May 8, 1986, must within 30 days of bringing such tank into use, submit, in the form prescribed in Appendix I of this chapter, a notice of existence of such tank system to the implementing agency to receive such notice.
- (b) Owners required to submit notices under paragraph (a) of this section must provide notices to the implementing agency for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation must file a separate notification form for each separate place operation.
- (c) All owners and operator s of new UST systems must certify in the notification compliance with the following requirements:
 - (1) Installation of tanks and piping under 24.0710(f);
 - (2) Cathodic protection of steel tanks and piping under 24.0710(a) and (b);
 - (3) Financial responsibility under Subchapter G of this chapter; and
 - (4) Release detection under 24.0741
- (d) All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with requirements in 24.0710(f)
- (e) Beginning October 24,1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner’s

notification obligations under paragraph (a) of this section.

History: Rule 3-01, eff 30 Aug 01.

24.0713 Permits required.

- (a) Owners and operators of underground storage tanks and aboveground storage tanks installed prior to the effective date of these regulations shall submit an application for a permit from the commission within 30 days of the effective date.
- (b) Prior to construction, installation, modification or repair or any underground or above ground tank, owners and operators shall apply for and obtain a permit from the commission.
- (c) Applications for permits shall at minimum include the size of the tank, tank material, description of the leak detection systems, material to be stored, installed procedures, operating procedures and nearby utilities.
- (d) The permittee shall notify the implementing agency of any change of ownership within 10 days of such change. The new owner and operator must apply for and obtain a permit from the commission prior to use or operation of the tank
- (e) Owners and operators of underground storage tanks meeting the requirements of 24.0710 or 24.0711 shall obtain a compliance certificate pursuant to 24.07890. Before the implementing agency issues a new certificate or renewal to operate an underground storage tank, the implementing agency shall inspect the underground storage tank and determine that it complies with provisions of these regulations
- (f) Failure to comply with the conditions of any permit issued by the commission shall be violation of this chapter.

History: Rule 3-01, eff 30 Aug 01.

24.0720 Spill and overflow control.

- (a) Owners and operators must ensure that releases due to spilling or overflowing do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transferred is made and that the transfer

operation is monitored constantly to prevent overfilling and spilling.

Note: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with paragraph (a) of this section. Further Guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, “Recommended Practice for Bulk Liquid Stock Control at Retail Outlets,” and National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code.

- (b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with 24.0750.

History: Rule 3-01, eff 30 Aug 01.

24.0721 Operation and maintenance of corrosion protection.

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

- (1) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.
- (2) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:
 - (A) Frequency. All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the implementing agency; and
 - (B) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice

developed by a nationally recognized association.

Note: National Association of Corrosion Engineers Standard RP-02-85, “Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems,” may be used to comply with paragraph (b)(2) of this section.

- (3) UST systems with impressed current cathodic protection system must also be inspected every 60 days to ensure the equipment is running properly.
- (4) For UST systems using cathodic protection, records of the operation of the operation of the cathodic protection must be maintained (in accordance with 24.0724) to demonstrate compliance with the performance standards in this section. These records must provide the following:
 - (A) The result of the last three inspection required in paragraph (3) of this section; and
 - (B) The results of testing from the last two inspections required in paragraph (2) of this section.

History: Rule 3-01, eff 30 Aug 01.

24.0722 Compatibility.

Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

Note: Owner and operators storing alcohol blends may use the following codes to comply with the requirements of this section:

- (a) American Petroleum Institute Publication 1626, “Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations”; and
- (b) American Petroleum Institute Publication 1627, “Storage and Handling of Gasoline-Methanol/Cosolvent Blends Distribution Terminals and Service Stations.”

History: Rule 3-01, eff 30 Aug 01.

24.0723 Repairs allowed.

Owners and operators must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances.

The repair must meet the following requirements:

- (a) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

Note: The following codes and standards may be used to comply with paragraph (a) of this section: National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”; American Petroleum Institute Publication 2200, “Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines”; American Petroleum Institute Publication 1631, Recommended Practice for Interior Lining of Existing Steel Underground Storage Tanks”; and National Leak Prevention Association Standard 631, “Spill Prevention, 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection.”

- (b) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer’s authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.
- (c) Metal pipe sections and fittings that have released product as a result of corrosion or damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer’s specifications.
- (d) Repaired tanks and piping must be tightness tested in accordance with 24.0742(3) and 24.0743(2) within 30 days following the date of completion of the repair except as provided in paragraphs (d)(1) through (3), of this section:
 - (1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

- (2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in 24.0742(4) through (8); or
- (3) Another test method is used that is determined by the implementing agency to be no less protective of human health and the environment than those listed above.
- (e) Within 6 months following the repair of any cathodically protected UST system, the protection system must be tested in accordance with 24.0721(2) and (3) to ensure that it is operating properly.
- (f) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

History: Rule 3-01, eff 30 Aug 01.

24.0724 Reporting and record keeping.

Owners and operators of UST system must cooperate fully with inspections, monitoring, and testing conducted by the implementing agency, as well as requests for documents submission, testing and monitoring by the owner and operator.

- (1) Reporting. Owners and operators must submit the following information to the implementing agency:
 - (A) Notification for all UST systems, which includes certification of installation for new UST systems,
 - (B) Reports of all releases including suspected releases, spills and overfills, and confirm releases;
 - (C) Corrective actions planned or taken including initial abatement measures, initial site characterization, free product removal, investigation of soil and ground-water cleanup, and corrective action plan; and
 - (D) Repairs made to UST systems; and
 - (E) A notification before permanent closure or change-in-service.

(2) Recordkeeping. Owners and operators must maintain the following information.

- (A) A corrosion expert's analysis of the site corrosion potential if corrosion protection equipment is not used.
- (B) Documentation of operation of corrosion protection equipment.
- (C) Documentation of UST system repairs.
- (D) Recent compliance with release detection equipment.
- (E) Results of site investigation conducted at permanent closure.

(3) Availability and Maintenance of Records. Owners and operators must keep the records required either:

- (A) At the UST site and immediately available for inspection by the implementing agency; or
- (B) At a readily available alternative site and be provided for inspection to the implementing agency upon request.
- (C) In the case of permanent closure records required under 24.0773, owners and operators are also provided with the additional alternative of mailing closure records to the implementing agency if they cannot be kept at the site or an alternative site as indicated above.

History: Rule 3-01, eff 30 Aug 01.

24.0730 Installation standards for new above ground storage tanks.

The following standards are applicable to new above ground storage tanks and attached piping installed after the effective date of these regulations. New tanks must be:

- (1) equipped with the means to detect and prevent the overfilling of the tank before any discharge can occur; and
- (2) equipped with secondary containment adequate to contain the volume of the tank or in the case of multiple tanks in one containment area,

adequate to contain the volume of the largest tank.

History: Rule 9-88, eff 30 Aug 88, § 1; Rule 3-01, eff 30 Aug 01.

24.0740 General requirements.

(a) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

- (1) Can detect a release from any portion of the tank and the connected underground that routinely contains product.
- (2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
- (3) Meets the performance requirements in 24.0742 or 24.0743 with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990 except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in 24.0742,(2), (3), and
- (4) or 24.0743(1) and (2) with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) When a release detection method operated in accordance with the performance standards in 24.0742 and 24.0743 indicates a release may have occurred, owners and operators must notify the implementing agency in accordance with 24.0750.

(c) Owners and operators of all UST systems must comply with the release detection requirements of this subchapter by the enactment of this rule.

History: Rule 3-01, eff 30 Aug 01.

24.0741 Requirements for petroleum UST systems.

Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(1) Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in 24.0742(4) through (8) except that:

(A) UST systems that meet the performance standards in 24.0710 or 24.0711, and the monthly inventory control requirements in 24.0742(1) or (2), may use tank tightness testing (conducted in accordance with 24.0742(3) at least every 5 years until December 22, 1998, or until 10 years after the tank is installed or upgraded under 24.0711(b), whichever is later;

(B) UST systems that do not meet the performance standards in 24.0710 or 24.0711 may use inventory controls (conducted in accordance with 24.0742(1) or (2) and annual tank tightness testing (conducted in accordance with 24.0742(3) until December 22, 1998 when the tank must be upgraded under 24.0711 or permanently closed under 24.0770; and

(C) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with 24.0742(2).

(2) Piping. Underground piping that routinely contains regulated substance must be monitored for releases in a manner that meets one of the following requirements:

(A) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

- (i) Be equipped with an automatic line leak detector conducted in accordance with 24.0743 (1); and
- (ii) Have an annual line tightness test conducted in accordance with 24.0743(2) or have monthly monitoring conducted in accordance with 24.0743(3).

(B) Suction piping. Underground piping that conveys regulated substances under must

either have a line tightness test conducted at least every 3 years and in accordance with 24.0743(2), or use a monthly monitoring method conduct in accordance with 24.0743(3). No releases detection is required for suction piping that is designed and constructed to meet the following standards:

- (i) The below-grade piping operates at less than atmospheric pressure;
- (ii) The below-grade piping is slope so that the contents of the pipe will drain back into the storage tank if the suction is released;
- (iii) Only one check valve is included in each suction line;
- (iv) The check valve is located directly below and as close as practical to the suction pump; and
- (v) A method is provided that allows compliance with paragraphs (2)(B)(iii) through (iv) of this section to be readily determined.

History: Rule 3-01, eff 30 Aug 01.

24.0742 Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of 24.0741 must be conducted in accordance with the following:

(1) Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly basis in the following manner:

- (A) Inventory volume measurements for regulated substance inputs, withdrawals and the amount still remaining in the tank are recorded each operating day;
- (B) The equipment used is capable of measuring the level of product over the full range of the tank’s height to the nearest one-eighth of an inch;
- (C) The regulated substance inputs are reconciled with delivery receipts by

measurement of the tank inventory volume before and after delivery;

- (D) Deliveries are made through a drop tube that extends to within one foot of the bottom;
 - (E) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and
 - (F) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.
- (2) Manual tank gauging. Manual tank gauging must meet the following requirements:
- (A) Tank liquid level measurements are taken at the beginning and ending of a period at least 36 hours during which no liquids is added to or removed from the tank;
 - (B) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of a period;
 - (C) The equipment used is capable of measuring the level of product over the full range of the tank’s height to the nearest one-eighth of an inch;
 - (D) A leak is suspected and subject to the requirements of 24.0750 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Weekly capacity (average of four tests)	Monthly standard tank capacity (one test)	Standard
550 gallons or less	10 gallons...	5 gallons.....
551-1,000 gallons	13 gallons...	7 gallons.....
1,001-2,000 gallons	26 gallons...	13 gallons.....

- (E) Only tanks of 550 gallons or less nominal or capacity may use this as the sole method of release detection. Tanks of 551 to 2,000 gallons nominal capacity may not use the method in place of manual inventory

control in 24.0742(1). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subchapter.

- (3) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.
- (4) Automatic tank gauging. Equipment for automatic tank gauging that test for the loss of product and conducts inventory control must meet the following requirements:
 - (A) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and
 - (B) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of 24.0742(1)
- (5) Vapor Monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:
 - (A) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;
 - (B) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event a release from the tank;
 - (C) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences

so that a release could go undetected for more than 30 days;

- (D) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;
 - (E) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;
 - (F) In UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (5)(A) through (E) of this section and to establish the number and the positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and
 - (G) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (6) Ground-water monitoring. Testing or monitoring for liquids on the ground water must meet the following requirements:
- (A) The regulated substance stored is immiscible in water and has a specific gravity of less than one;
 - (B) Ground water is never more than 20feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravel, coarse to medium sand, coarse silts or other permeable materials);
 - (C) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well

under both high and low ground-water conditions;

- (D) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;
 - (E) Monitoring wells or devices intercept the excavation zone or are so close to it as is technically feasible;
 - (F) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;
 - (G) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (6)(A) through (E) of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and
 - (H) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (7) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:
- (A) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;
 - (B) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;
 - (i) The secondary barrier around or beneath the UST system consists of artificially constructed materials that is sufficiently thick and impermeable (at least 10-6 cm/sec for the regulated

substance stored) to direct a release to the monitoring point and permit its detection;

- (ii) The barrier is compatible with the regulated substance stored so that a release from UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;
 - (iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;
 - (iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;
 - (v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,
 - (vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
- (C) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner is compatible with the substance stored.

- (8) Other methods. Any other type of release detection method, or combination of methods, can be used if:
- (A) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or
 - (B) The implementing agency may approve another method if the owner and operator can demonstrate that the methods allowed in paragraphs (3) through (8) of this section.

In comparing methods, the implementing agency shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the implementing agency on its use to ensure the protection of human health and the environment.

History: Rule 3-01, eff 30 Aug 01.

24.0743 Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of 24.0741 must be conducted in accordance with the following:

- (1) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual tests of the operation of the leak detector must be conducted in accordance with manufacturer’s requirements.
- (2) Line tightness testing. A periodic test of piping may be conducted only if it can be detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.
- (3) Applicable tank methods. Any methods in 24.0742 (5) through (8) may be used if they are designed to detect a release form of any portion of the underground piping that routinely contains regulated substances.

History: Rule 3-01, eff 30 Aug 01.

24.0744 Release detection recordkeeping.

All UST owners and operators must maintain records in accordance with 24.0724 demonstrating compliance with all applicable requirements of this subchapter. These records must include the following :

- (1) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested

by the equipment manufacturer or installer, must be maintained for 5 years, or for another reasonable period of the time determine by the implementing agency, from the date of installation;

- (2) The results of any sampling, testing, or monitoring must be maintained for at least 1 year, or for another reasonable period of time determined by the implementing agency, except that the results of tank tightness testing must be retained until the next test is conducted; and
- (3) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for t least one year after the servicing work is completed.

History: Rule 3-01, eff 30 Aug 01.

24.0750 Leak reporting and correction.

Owners and operators of UST systems must report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, and follow the procedures in this subchapter for any of the following conditions:

- (1) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water.)
- (2) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and,
- (3) Monitoring results from a release detection method required under 24.0742 through 24.0743 that indicate a release may have occurred unless:
 - (A) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional

monitoring does not confirm the initial result; or

- (B) In the case of inventory control, a second month of data does not confirm the initial result
- (4) Any leak, spill, overfill, discharge or other release from any tank shall be stopped as soon as practicable. Expenses incurred by others to stop any discharge are the responsibility of the operator.
- (5) Any tank from which a release has been detected shall:
 - (A) be immediately removed from service until the tank is repaired or replaced; and
 - (B) meet the installation standards for new underground storage tanks contained in 24.0710 or the installation standards for new above ground storage tanks contained in 24.0730 as appropriate before being returned to service.
- (6) The owners and operators of any tank from which a release has been detected must immediately clean up all released material to background levels, levels required by other territorial or Federal regulations or to a level approved in writing by the commission which is protective of human health and the environment. The commission will determine the appropriate clean up levels.

Note: Reference 40CFR Part 280Subpart F-Release Response and Corrective Action for UST Systems Containing Petroleum of Hazardous Substances.
- (7) In addition to the required cleanup in subsection (6) above, the commission may require the operator to conduct any investigations, monitoring, surveys, testing, or other activities necessary to identify the extent of a release, the effectiveness of a clean up, the material released the source of the leak or the extent of the danger to public health, safety, welfare or the environment.
- (8) Owners and operates must develop an Emergency Response Plan (ERP) for the site.

The plan must address anticipated emergencies. EPA’s and OSHA’s hazardous waste operations and emergency response (HazWoper) standards (29 CFR 1910.120, 40 CFR 311) should be used for reference in the development of the plan. The plan at a minimum must include:

- (A) pre-emergency planning;
 - (B) personnel roles, lines of authority, training and communications;
 - (C) emergency recognition and prevention;
 - (D) safe distance and places of refuge;
 - (E) site security and control;
 - (F) evacuation routes and procedures;
 - (G) decontamination;
 - (H) emergency medical treatment and first aid;
 - (I) emergency alerting and response procedures;
 - (J) critique of response and follow-up; and
 - (K) personal protective equipment and emergency equipment.
- (9) All waste collected from any spill clean-up must be disposed of properly according to local and federal laws.

History: Rule 3-01, eff 30 Aug 01.

24.0760 Financial Responsibility.

The owners and operators of all underground and above ground storage tanks are responsible for the costs of monitoring for releases, clean up and proper disposal of any soil or water contaminated by releases, tank repair and/or replacement, compensation of third parties for bodily injury or property damage and any other costs incurred from operating a storage tank.

History: Rule 3-01, eff 30 Aug 01.

24.0770 Permanent closure and changes-in-service.

Any tank removed from service prior to the effective date of these rules or any tank to be removed from service for more than 12 months shall be permanently closed. Permanent closure includes:

- (1) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (2) and (3) of this section, or within another reasonable time period determined by the implementing agency, owners and operators must notify the implementing agency of their intent to permanently close or make the change-in-service.
- (2) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.
- (3) Continued use of an UST system to store a non-regulated substance is considered a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with 24.0772.
- (4) If a UST is permanently closed and removed from the ground, the UST cannot be reused as an AST. The tank must be properly disposed as approved by the implementing agency.
- (5) Workers /contractors performing cleaning and/or removal of the implementing agency and requirements meet or exceed OSHAs and EPAs hazardous waste operations (29 CFR 1910.120 : 40-Hour HazWoper.)

Note: The following cleaning and closure procedures may be used to comply with this section:

- (A) American Petroleum Institute Recommended Practice 1604, “Removal and Disposal of Used Underground Petroleum Storage Tanks”;
- (B) American Petroleum Institute Publication 2015, “Cleaning Petroleum Storage Tanks”;
- (C) American Petroleum Institute Recommended Practice 1631, “Interior Lining of Underground Storage tanks, may be used as guidance for compliance with this section; and

(D) The National Institute for Occupational Safety and Health, “Criteria for a Recommended Standard * * * Working in Confined Space” may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

History: Rule 3-01, eff 30 Aug 01.

24.0771 Temporary closure.

- (a) When a UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with 24.0721, and any release detection in accordance with Subchapter E. Subchapter F must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system
- (b) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:
 - (1) Leave vent lines open and functioning; and
 - (2) Cap and secure all the other lines, pumps, manways, and ancillary equipment.
- (c) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in 24.0710 for new UST systems or the upgrading requirements in 24.0711 except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-months in accordance with 24.0770, unless the implementing agency provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with 24.0772 before such an extension can be applied for.
- (d) The owner and operator must tag the fill pipe and pipe and pump of the UST system in temporary

closure with a status label issued by the implementing agency.

History: Rule 3-01, eff 30 Aug 01.

24.0772 Assessing the site at closure or change-in-service.

- (a) Before permanent closure or a change-in-services is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In the selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in 24.0742(5) and (6) is operating in accordance with the requirements in 24.0742 at the time of closure, and indicates no release has occurred.
- (b) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered under paragraph (a) of this section, or by any other manner, owners and operators must begin corrective action in accordance with Subchapter F.

History: Rule 3-01, eff 30 Aug 01.

24.0773 Closure records

Owners and operators must maintain records in accordance with 24.0724 that are capable of demonstrating compliance with closure requirements under this section. The results of the excavation zone assessment required in 24.0772 must be maintain for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

- (1) By the owners and operators who took the UST system out of service;
- (2) By the current owners and operators of the UST system site; or
- (3) By mailing these records to the implementing agency if they cannot be maintained at the closed facility.

History: Rule 3-01, eff 30 Aug 01.

24.0780 UST Certification of Compliance

(a) Content of Compliance Certificates

- (1) A compliance certificates includes one decal as described in (2) of this section, one file copy of the decal as described in (3) of this section, and one tag for each tank storing petroleum as described in (4) of this section.
- (2) A decal shall have an adhesive-backing and shall be 5 inches wide by 8 inches long containing:
 - (A) a graphic comprised of the ASEPA logo;
 - (B) the words, “Underground Storage Tank Facility Compliance Certificates;”
 - (C) the statement, “This compliance certificate is issued pursuant to Chapter 7, Section 24.0713(f), American Samoa Annotated Code;”
 - (D) a certificate number affixed mechanically at the time of production;
- (3) A file copy shall be paper, 8 ½ inches wide by 11 inches long, and shall contain:
 - (A) in the upper right corner, a certificate number affixed at the time of production;
 - (B) an unnumbered, black and white facsimile of the compliance certificate;
 - (C) instructions to the implementing agency to enter the name of the owner, and facility; village, mailing address, facility identification number; name of issuing agency; and date of issue.
- (4) A tag made of plastic. It shall bear a facsimile of an unnumbered decal on both Sides and contains the words, “UST COMPLIES WITH ASAC, CHAPTER 7.”

(b) Issuing Compliance Certificates

- (1) The implementing agency shall provide decals, file copies, tags, and nylon straps for

issuance to underground storage tank facilities.

- (2) The implementing agency shall issue one decal to the owner or operator of each underground storage tanks meeting the requirements of 24.0710 and 24.0711.
- (3) The implementing agency shall issue one matching file copy of the decal to the owner or operator.
- (4) The implementing agency shall issue one tag for each petroleum underground storage tank meeting the requirements of 24.0710 and 24.0711, to the owner or operator.
- (5) The implementing agency shall issue one locking nylon strap, for each tag issued.

(c) Displaying Compliance Certificates

- (1) A decal shall be displayed at the facility in a location visible to the person delivering petroleum to an underground storage tank.
- (2) A tag shall be displayed on the fill pipe of each underground storage tank. It shall be attached a nylon strap described in (a)(4) of this section.

(d) Replacing Compliance Certificates

- (1) A facility owner or operator may request replacement of a lost, stolen, or destroyed decal, file copy, tag, or strap from the implementing agency. The request must be in in writing, signed under penalty of perjury by the requester, and include the reason for the request and any additional information as required by the implementing agency.
- (2) The implementing agency may replace a decal, file copy, tag, or nylon strap to the facility owner or operator upon receipt of a written request. No replacements shall be issued if the implementing agency determines that the request is not due to loss, theft, or destruction of the originals.

(e) Lists of Underground Storage Tank Facilities

- (1) The implementing agency shall maintain lists of underground storage tank facilities that have been issued a compliance certificate. The lists shall include, but not to be limited to the name and physical address of the facility, the compliance certificate number, and the name of the owner.
- (2) The implementing agency shall provide copies of lists to any person upon request.
- (f) Prohibitions
 - (1) No person shall alter a compliance certificate decal.
 - (2) Unless authorized by the implementing agency, no person shall alter a compliance certificate file copy. The implementing agency may amend the file copy to reflect changes in the operating permit.
 - (3) No person shall deliver petroleum to an underground storage tank without verification that the underground storage tank meets the requirements of Section 24.0710 or 24.0711. Verification may include one of the following:
 - (A) viewing a compliance certificate decal displayed at the facility and viewing a fill pipe tag attached to the tank receiving petroleum;
 - (B) obtaining written verification or lists from the implementing agency confirming that the facility has received a compliance certificate decal and viewing a fill pipe tag attached to the tank receiving petroleum;
 - (C) obtaining a compliance certificate file copy and viewing a fill pipe tag attached to the tank receiving petroleum

History: Rule 3-01, eff 30 Aug 01.

24.0781 Enforcement.

Enforcement of this chapter shall be in accordance with the applicable provisions of the territorial Environmental Quality Act, 24.0101 et seq. ASCA.

History: Rule 3-01, eff 30 Aug 01.

TITLE 24 – CHAPTER 08 – HAZARDOUS MATERIALS

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- 24.0856 Corrosion control-External.
- 24.0857 Corrosion control-Internal
- 24.0858 Corrosion control—Atmospheric corrosion.
- 24.0859 Corrosion control—Remedial measures.
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- 24.0865 Test Requirements—General.
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- 24.0867 Uprating.
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- 24.0881 Response plans.
- 24.0885 Scope and Applicability.
- 24.0886 Pipeline transport safety requirements.
- 24.0887 Accident reporting.

History: Rule 02-01, eff 30 Aug 01.

24.0803 Applicability.

Any person who imports, handles, uses, transports, generates, stores or disposes of a hazardous substance, as defined in section 24.0804, must comply with the standards set forth in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0804 Definitions.

As used in this chapter:

- (1) “Acutely hazardous waste” means the hazardous wastes identified in Appendix A of these standards and regulations, which are appended hereto and incorporated by reference herein. In addition, those toxic substances set forth at 40 CFR 261.33(f) shall also be considered acutely hazardous wasters for purposes of this chapter.
- (2) “ASEPA” means the American Samoa Environment Protection Agency.
- (3) “Compatibility” means the property of a material or waste that permits its use with other materials or wastes without resulting in a present threat to public health and safety or the environment.
- (4) “Discharge” includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, placing or dumping of hazardous substances into or on any land or water so that such hazardous substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. Such term excludes continuous or anticipated intermittent discharges from a point source allowed under a NPDES permit or other permit issued by ASEPA.
- (5) “Disposal” means the placement or destruction of toxic, radioactive, or other wastes; surplus or banned pesticides or other chemicals; polluted soil; and drums containing hazardous materials from removal actions or accidental releases. Disposal may be performed, as approved by ASEPA, through use of secure landfills, surface impoundments, land farming, deep-well injection, ocean dumping, or incineration.
- (6) “Executive director” means the executive director of the Environment Quality

24.0801 Purpose.

This chapter establishes the standards and regulations for hazardous wastes and materials transportation, storage, treatment and disposal in American Samoa. The goal of these standards is to prevent pollution and protect the public health and safety and the environment by regulating the use, treatment and handling of all hazardous substances imported or introduced for use in this territory.

History: Rule 02-01, eff 30 Aug 01.

24.0802 Authority.

Pursuant to 24.0101 et seq. ASCA, the executive secretary shall have the authority to manage all hazardous wastes and hazardous materials generated, transported, stored or disposed of within this territory, and may prohibit such generation, transportation, storage or disposal if it is determined that such activities will endanger public health and safety or the environment, or where such activities are not performed in accordance with the regulations set forth in this chapter.

Commission and the director of the American Samoa Environment Protection Agency (ASEPA).

- (7) “Generator” means any person, by site, whose act or process produces hazardous waste identified in the manner required by section 24.0814 of this chapter or whose act first causes a hazardous waste to become subject to regulation.
- (8) “Hazardous material” means the materials regulated by the U.S. Department of Transportation that require special handling and controls.
- (9) “Hazardous substance” means either a “hazardous material” or “hazardous wastes” or both, as defined in these standards and regulations.
- (10) “Hazardous wastes” means solid waste, or a combination of solid wastes determined to be hazardous under 24.0814 of this chapter which, because of its quantity, concentration, or physical, chemical or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness, or pose substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed or otherwise managed.
- (11) “Manifest” means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.
- (12) “Material safety data sheet (MSDS) ” means a document that presents information, required under U.S. Occupational Safety and Health Act standards, on a chemical’s physical properties, health effects, and use precautions.
- (13) “PCB Article means any manufactured article, other than a PCB container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. Articles include capacitors, transformers, electric motors, pumps, pipes, and other manufactured items (1) that are formed to a specific shape or design during manufacture, (2) that have end-use functions dependent in part or in whole on the shape or design during end-use, and (3) that have either no change of chemical composition during end-use or only changes of composition having no commercial purpose separate from that of the PCB article.
- (14) “PCB item” means any PCB article, PCB article container, PCB container, or PCB equipment that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.
- (15) “PCBs (polychlorinated biphenyls) ” means a group of toxic, persistent chemicals used in transformers and capacitors for insulation and in gas pipeline systems as a lubricant.
- (16) “Person” means an individual, a corporation, a partnership, a trust, an association, or any other private entity or any public body or officer, employee, agent, department, or instrumentality of the U.S Government or of a foreign government.
- (17) “Regulated medical waste (RMW) ” means waste that is produced as the direct result of patient care at a health care facility and that has the potential to endanger individual or community health, welfare or the environment if improperly managed.
- (18) “ Release” means spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous substances, pollutants, or contaminants, but excluding:
- (A) A release that results in exposure of persons solely within a workplace, for which exposure such persons may assert a claim against their employer;
- (B) Emissions from the engine exhaust of a motor vehicle, rolling stock, an aircraft, a vessel, or a pipeline-pumping station engine and from the normal application of fertilizer.

(19) “Solid waste” means garbage, refuse, sludge, hazardous waste and other discarded materials resulting from industrial and commercial operations and from community activities, including sludge from a wastewater treatment plant, but does not include other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluent, dissolved material in irrigation return flows, or other common water pollutants.

(20) “Treatment” means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a hazardous waste to neutralize the waste or to recover energy or material resources from the wastes, or to render such waste non-hazardous or less hazardous; safer to transport, store, or dispose of; amenable to recovery or to storage; or reduced in volume.

History: Rule 02-01, eff 30 Aug 01.

24.0805 Matter incorporated by reference.

(a) Any document or portion thereof incorporated by reference in this chapter is included in this part as though it were printed in full. When only a portion of a document is referenced, this chapter incorporates only that referenced portion of the document and the remainder is not incorporated.

(b) All incorporated materials are available for inspection in the office of the American Samoa Environment Protection Agency (ASEPA) located in the Executive Offices Building, Village of Utulei, American Samoa.

History: Rule 02-01, eff 30 Aug 01.

24.0806 Enforcement.

Except as specifically provided herein, enforcement of the regulations set forth in this chapter shall be in accordance with the applicable provisions of the territorial Environment Quality, 24.0101 et seq. ASCA.

History: Rule 02-01, eff 30 Aug 01.

24.0807 Severability.

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

History: Rule 02-01, eff 30 Aug 01.

24.0810 Introduction and identification of hazardous materials

(a) Introduction.

(1) For all hazardous materials imported or otherwise introduced for use in this territory, the executive secretary shall manage, and have the discretion to prohibit, the procurement, use, storage or transportation of all materials that, because of their hazardous nature, toxicity, or other harmful characteristics, will endanger public health and safety and the environment.

(2) An MSDS shall be used to develop and document the presence in the territory of materials which might endanger public health and safety and the environment if improperly procured, used, stored, or transported or otherwise mismanaged.

(b) Identification. Hazardous materials imported or introduced for use in American Samoa shall be properly identified using the MSDS and one or more of the following types of information:

(1) Labeling [according to USDOT (49 CFR 172E) or NFPA specifications];

(2) Common name;

(3) Scientific or chemical name;

(4) Chemical Abstract Service (CAS) number

History: Rule 02-01, eff 30 Aug 01.

24.0811 Employee training

(a) All persons who are involved with the handling, treatment, storage, or cleanup of hazardous or

toxic wastes, pesticides, or hazardous substances as discussed in these standards and regulations shall have the level of knowledge required to perform their tasks safely and in a way that preserves the environment. Before engaging in these activities, such persons shall receive the following training to ensure that they are able to perform their tasks in an environmentally safe manner:

- (1) For workers engaged in processes that generate hazardous waste and whose duties are limited to collection and staging waste, employers shall provide a basic course on the properties and dangers of hazardous waste and on proper handling procedures and emergency-response procedures;
 - (2) For workers engaged in managing the collection and the storage or disposal of hazardous waste and for the workers engaged in storage, treatment, or disposal activities, employers shall provide training which covers the basic course material, including specialized training in the requirements for treatment, storage, and disposal;
 - (3) For the workers and managers whose responsibilities include responding to releases and cleaning up of releases of hazardous materials and wastes, employers shall provide the basic treatment, storage and disposal (TSD) course and additional training in the proper and safe methods for responding to releases and for cleaning up contaminated soil and water;
 - (4) For the workers engaged in transporting or preparing hazardous waste for transport, employers shall provide training to ensure that their personnel can safely prepare hazardous wastes for transport in accordance with section 24.0821 and sections 24.0830 through 24.0833, as applicable.
- (b) The employee's supervisor shall certify the training, and records shall be maintained in the personnel department or at the work site for each individual who requires training. Records of the

training shall be maintained for as long as the employee performs the duties for which the training was required or for 10 years, whichever comes first.

- (c) Annual refresher training in hazardous waste, pollution control, treatment methods, spill response and cleanup, and emergency procedures shall be conducted for all personnel who are required to receive the initial training. Information on the annual refresher training shall be noted in the training records, and records shall be maintained according to the requirements of subsection (b) of this section.

History: Rule 02-01, eff 30 Aug 01.

24.0812 Hazardous materials management and response plan.

- (a) Before hazardous materials are imported, the designated recipient shall develop a written management procedure outlining storage, use, transportation and disposal practices that minimize risks to public health and safety and the environment. Such management plan shall include an ASEPA approved emergency response plan outlining the procedures to be followed in the event of a spill, discharge or release of hazardous substances into the environment.
- (b) Plans shall be submitted to the executive secretary for approval within 15 days of the receipt of hazardous materials. If a plan is not complete or is found to be inadequate by the executive secretary the designated recipient shall be prohibited from any use, distribution and transport of the material until the hazardous material management plan is complete.

History: Rule 02-01, eff 30 Aug 01.

24.0813 Transportation- -General requirements.

- (a) Transport of hazardous materials to, from, and within this territory shall be conducted under USDOT regulations (49 CFR 172), including regulations for using labels (Subpart E), placards (Subpart F), markings (Subpart D) and containers (49 CFR 178, Subpart J).

- (b) Hazardous materials shall be transported to and within the territorial limits of American Samoa using only containers approved by the USDOT and which are compatible with the materials being transported. No container shall be used that is leaking, has deteriorated significantly as a result of rust, is bulging from over-pressure, or is damaged in such a way that materials are liable to leak. Containers that are unacceptable for transport shall be placed in containers approved by USDOT under 49 CFR part 178, or the materials transferred to a container approved by USDOT regulations.
- (c) Vehicles and vessels used for transport shall be appropriately sized and shall be compatible with the material being transported and shall be clean and free of debris. General use cargo shall be compatible with the materials being transported and in no case shall incompatible materials be transported on the same vehicle or vessel. Transporters shall ensure that any residues left in the transport equipment is removed and disposed of properly.
- (d) Transport equipment shall be identified by signs that are visible on both sides of the vehicle or vessel. The signs shall comply with the requirements of USDOT regulations at 49 CFR 172.101, which are hereby incorporated by reference, and shall indicate the hazard classes of the materials transported. The sizes of the signs shall conform to USDOT regulations at 49 CFR 172.300, which are hereby incorporated by reference, and shall be bilingual (English and Samoan).
- (e) Vehicles and vessels transporting hazardous materials shall carry emergency response equipment necessary and sufficient for the initial control of a spill or release, such as absorbent booms and material, rags, fire extinguishers, brooms, and shovels. In the event of a spill or release, the vehicle or vessel operator shall be responsible for notifying ASEPA and DPS and for making the initial response until a qualified HAZMAT response team arrives.

History: Rule 02-01, eff 30 Aug 01.

24.0814 Transportation—Special requirements.

- (a) Compressed gases shall be classified and identified as hazardous materials and shall be transported in compliance with the requirements of USDOT regulations set forth in 49 CFR parts 170-179, which are hereby incorporated by reference.
- (b) Pesticides. Unused pesticides, discarded pesticides and pesticide residues shall be included in the classification of hazardous materials and shall be transported in compliance with the transportation requirements of section 24.0813.
- (c) Transport of regulated medical waste (RMW) shall be carried out as follows:
 - (1) Filled bags of RMW shall not be transported loose. They shall be stored in rigid puncture-resistant, leak proof containers that will not tip over during transport. Transport containers may be reusable and shall be kept clean through the use of a hospital grade detergent-disinfectant that acts as a mycobacteriacide.
 - (2) Vehicles used for transporting RMW shall be readily cleanable.
 - (3) All vehicles used for transporting RMW shall be cleaned weekly or more frequently as needed, using a hospital grade detergent-disinfectant. The detergent-disinfectant shall be used in strict accordance with the manufacturer’s instructions. If a spill occurs, the vehicle shall be cleaned immediately. All vehicles used for transporting RMW shall be cleaned before being used for any other purpose.
 - (4) All vehicles used for transporting RMW shall carry a kit for spill containment and cleanup that is appropriate for responding to a spill or release of RMW.
- (d) Transport of PCB’s and PCB items. In addition to the pre-transport requirements for hazardous waste items set forth in section 24.0824, the following requirements shall apply to PCB’s:

- (1) For each PCB article that is not in a PCB container or in a PCB-article container, the serial number, or other identification if there is no serial number, the date of removal from service for disposal, and the weight in kilograms of the PCB waste in each PCB article shall be marked in accordance with the requirements of section 24.0817(d)(4).
- (2) All transport vehicles used for transport of PCB's or PCB items shall be marked in accordance with the requirements of section 24.0813.

History: Rule 02-01, eff 30 Aug 01.

24.0815 Storage—General requirements.

Before being distributed or used, all imported hazardous materials shall be stored in a way that will protect against the unintentional release of the materials to the environment. Where storage is defined as 10% of the reportable quantity or 55 gallons or greater, protective measures shall include:

- (1) Segregation of incompatible materials including segregation of all unregulated incompatible materials stored in the same area;
- (2) Protection from exposure to weather through storage in an indoor area, including adequate roofs, walls, and floors to prevent rain from reaching PCB's;
- (3) Location in an area that if flooded would pose no risk to populated areas or the water supply;
- (4) Protection from all sources of heat, fire hazards, and adequate ventilation;
- (5) Bilingual warning signs, in both English and Samoan, indicating the type of substances stored and their hazards shall be posted outside the storage area;
- (6) Adequate security, including fences, barriers or other means of preventing unauthorized access, and adequate lighting to promote discovery of spills at night and to prevent spills caused by vandalism;
- (7) Containers used to store materials shall be in good condition, shall be compatible with the

items being stored, and shall be closed at all times while in storage. Containers used to store materials shall be handled in a way that does not cause the containers to rupture or leak;

- (8) Inspections. All storage areas shall be inspected weekly to detect leaking or deteriorating containers and to ensure that all emergency equipment is functioning. All leaking containers and their contents shall be transferred immediately to properly marked non-leaking containers, and spilled or leaked materials cleaned up immediately using absorbents or other adequate means. Inspections shall be conducted by facility personnel whose training has been documented and verified in compliance with sections 24.0811. Inspections shall be documented and records kept on the premises for at least one year.
- (9) Labeling in accordance with requirements of USDOT regulations set forth in 49 CFR part 172, which are hereby incorporated by reference.
- (10) Facility requirements as follows:
 - (A) All facilities where hazardous substances are accumulated or staged shall be off-limits to unauthorized personnel, and appropriate steps shall be taken to protect the public health and safety;
 - (B) All facilities where hazardous substances are accumulated or staged, where pollution control devices are operating, or where treatment facilities are located shall have the following devices and equipment for personnel protection:
 - (i) Eyewash station;
 - (ii) Shower;
 - (iii) Emergency communication equipment;
 - (iv) Fire protection as approved by the fire chief;
 - (v) Personal protection suits, gloves and boots;

- (vi) Spill response equipment appropriate for the amounts and types of materials handled at the facility.
- (C) Spill prevention equipment. All facilities that accumulate or stage material characterized as hazardous and having the potential to become hazardous waste if released into the environment shall have appropriate containment and spill-prevention controls for preventing a release. Containment devices shall be capable of holding the content of the largest container or 10 percent of all material accumulated or staged in the area, whichever is greater. Such facilities shall be equipped with weather-protection devices that are sufficient for preventing rain or runoff from entering the facility.
- (11) A sign or signs bearing the legend “Danger: Unauthorized Personnel Keep Out” shall be posted at each entrance or active part of a facility and at other locations in numbers sufficient to be seen from any approach. The legend shall be written in English and Samoan and shall be legible from a distance of at least 50 feet. Signs in Samoan and English warning of hazards (e.g., “No Smoking”) also shall be posted.
- (b) Petroleum-product storage tanks. In addition to the requirements of 24.0701 et seq. ASAC, tanks used for storing petroleum products shall meet the following requirements:
 - (1) A tank shall not be used for storing oil unless its material and construction are compatible with the stored material and the conditions of storage;
 - (2) Visible oil leaks that could result in a loss of oil from tank seams, gaskets, rivets, and bolts in amounts sufficiently large to cause oil to accumulate in diked areas or secondary containment areas shall be corrected promptly;
 - (3) Mobile or portable oil-storage tanks or drums shall be positioned or located in a way that prevents spilled oil from reaching waters of American Samoa and supplies fresh water (i.e., not over the lens wells or in catchment areas). Secondary means of containment shall be applied as required under 24.0704 ASAC.
 - (4) Testing, inspections and installation of all underground and above ground storage tanks shall be carried out according to the provisions of 24.0701 et seq. ASAC.

History: Rule 02-01, eff 30 Aug 01.

History: Rule 02-01, eff 30 Aug 01.

24.0816 Storage—Hazardous materials and petroleum products.

24.0817 Special storage requirements.

- (a) Hazardous materials
 - (1) Hazardous materials shall be segregated in an environmentally controlled building in accordance with NFPA specifications or with charts and literature on chemical compatibility. Segregation considerations shall include, at a minimum, categories for flammability, combustibility, corrosivity (Ph-specific), poisons, explosives, reactivity, and toxicity.
 - (2) A current copy of the MSDS, as noted in section 24.0810, shall be on file before hazardous material issued from the hazardous material facility is used. A copy of the MSDS for each product shall be kept at least at the storage facility.
- (a) Compressed gas and compressed gas cylinders. Compressed gas shall be classified as a hazardous material and shall be stored in accordance with the general requirements of subsection (a) of this section and the requirements in subsection (b) of this section for storing hazardous materials and petroleum products. Compressed gases and compressed gas cylinders also shall be stored in compliance with the following requirements:
 - (1) Cylinders of compressed gas shall be classified and labeled in storage as “filled” or “empty”. Empty cylinders are cylinders that have been certified to be empty or residual pressure or those that have been expended but still retain constant pressure. All empty cylinders that have been certified

to be void of residual pressure are to be labeled “empty”. Filled and empty cylinders shall be separated and so shall any incompatible materials, such as oxygen, which shall be stored 100 feet from acetylene or hydrogen unless separated by an approved firewall.

- (2) If a cylinder valve leak is discovered, the valve shall be closed immediately. If the leak continues after the valve is closed, the cylinder shall be moved to an outside area and the appropriate safety officials shall be notified. If the gas is toxic or flammable, it shall be isolated in an area away from buildings and public roads, if possible. Open flames shall not be used to test for leaks in compressed-gas cylinders.
 - (3) Flame or spark-producing items shall not be used within 50 feet of storage areas for compressed gas. Cylinders of compressed gas shall not be allowed to come in contact with fire, sparks, or electrical circuits.
- (b) Storage of pesticides. Pesticides shall be classified as a hazardous material and shall be stored in accordance with the general requirements of 24.0815, the requirements of 24.0816 for hazardous materials and petroleum products, and the requirements of 24.0601 et seq. ASAC.
- (c) Storage of medical waste. Medical waste, as defined in section 24.0804(17), intended for disposal shall be securely stored in an enclosed and locked areas under the control of director of medical services.
- (d) PCB’s and PCB items. In addition to the general requirements in section 24.0815(a), the following special provisions apply to PCB’s at concentrations of 50 ppm or greater and to PCB items having PCB concentrations of 50 ppm or greater that are stored for disposal:
- (1) Non-leaking and structurally undamaged large PCB high-voltage capacitors and PCB contaminated equipment that have not been drained of free-flowing dielectric fluid may be stored on pallets next to a storage facility that meets the requirements of section 24.0815(a). PCB-contaminated electrical equipment that has been drained of free-flowing dielectric fluid is not subject to the storage provisions of this section. Storage of the items discussed in this paragraph shall be permitted only when the storage facility has immediately available unfilled storage space equal to 10 percent of the volume of the capacitors and equipment stored outside the facility. Any equipment so stored shall be checked weekly for leaks.
 - (2) No item of movable equipment used for handling PCB’s and PCB items in the storage facilities that comes in direct contact with PCB’s shall be removed from the area of the storage facility unless it has been decontaminated as specified in the description of appropriate decontamination requirements.
 - (3) All containers used for storing liquid PCB’s shall comply with the following shipping-container specifications of USDOT regulations: 49 CFR 178.80 (specification 5, container without removable head), 178.102 (specification 6D, overpack, with (specification 2S, 178.35) or 2SL (178.35a, polyethylene containers) of 178.116 (specification 17E, container). All containers used for storing non-liquid PCB’s shall comply with the specifications of 49 CFR 178.80 (specification 5, container). As an alternative, containers larger than those specified in USDOT specifications 5, 5B, or 17C may be used for non-liquid PCB’s if the containers are designed and constructed in a way that will provide as much protection against leaking and exposure to the environment and are of the same relative strength and durability as the USDOT-specification containers.
 - (4) The date on which the PCB articles and PCB containers are placed in storage shall be marked on the exterior of the articles and containers. Storage containers specified under this section shall have a record that includes the quantity of each batch of

PCB's and the date the batch was added to the container.

- (5) Secondary containment sufficient to contain twice the volume of the largest container being used or 25% of the total volume of PCB's and PCB items being stored, whichever is greater, is required.

History: Rule 02-01, eff 30 Aug 01.

24.0818 Materials use and operation.

(a) General requirements.

- (1) All materials imported to American Samoa shall be used only for the purposes for which they were imported and in accordance with the specific use instructions for the substance.
- (2) Persons using hazardous materials shall be trained in the proper use of the substance, as required under section 24.0811.
- (3) No hazardous materials shall be used without an MSDS. Supervisors shall inform workers about the dangers, precautions for use, and disposal methods as approved by these standards, for the particular product or substance.
- (4) Supervisors shall ensure that suitable protective gear shall be used at all times to prevent exposure of workers to hazardous materials.
- (5) Provisions shall be made in compliance with section 24.0815(a)(10) to ensure that workers handling hazardous materials are decontaminated before they leave the work area.
- (6) All hazardous materials shall be used in accordance with the requirements of the hazardous materials management plan required under section 24.0812.

(b) Special requirements.

- (1) Compressed gases. For the purposes of these standards and regulations, compressed gases are considered hazardous materials and shall be used in accordance with the requirements of section 24.0818.

- (2) Pesticides. Use, distribution, certification, labeling and record keeping shall be in accordance with 24.1201 et seq. ASCA and regulations in force pursuant thereto.

(3) Asbestos materials.

- (A) Materials containing asbestos shall be used and maintained in compliance with the provisions of the hazardous materials management plan at a minimum, the plan shall include the following information:

- (i) the location of the areas that contain friable asbestos;
- (ii) the type of asbestos containing material;
- (iii) the relative amount of material (e.g., linear feet, square feet).

- (B) Asbestos labeling: All areas containing asbestos shall be marked with a bilingual asbestos-identification label in English and in Samoan specifying the potential asbestos hazard, as follows:

**CAUTION: ASBESTOS;
HAZARDOUS. DO NOT DISTURB
WITHOUT PROPER TRAINING
AND EQUIPMENT**

(C) Asbestos abatement projects:

- (i) Employers shall ensure that no employee is exposed to an airborne concentration in excess of the permissible exposure limit (PEL), as required by and determined under 40 CFR 763.121(c). The provisions of 40 CFR 763.121 are hereby incorporated by reference in these standards and regulations.
- (ii) In work areas where airborne concentrations of asbestos exceed the PEL, employers shall establish a regulated area in accordance with the requirements

of 40 CFR 763.121(e), which is hereby incorporated by reference.

- (iii) Exposure monitoring during asbestos-abatement projects shall be carried out in accordance with the requirements of 40 CFR 763.121(f).
- (iv) The employer shall adhere to the engineering controls, work practices, and prohibitions of 40 CFR 763.121(g).
- (v) The employer shall supply, and require the use of, respirators as required under 40 CFR 763.121(h).
- (vi) The employer shall supply, and require the use of, protective clothing for all employees exposed to airborne concentrations of asbestos that exceed the PEL, in accordance with 40 CFR 763.121(i).
- (vii) The employer shall provide hygiene facilities and adhere to decontamination practices as required under 40 CFR 763.121(j).
- (viii) The employer shall conform to the housekeeping methods and the requirements for asbestos waste disposal of 40 CFR 763.121(l).
- (ix) Medical surveillance of employees engaged in asbestos abatement projects shall be conducted in accordance with the requirements of 40 CFR 763.121(m).
- (x) The requirements of appendices, A, C, D, and E of 40 CFR 763.121, EPA/OSHA Reference Method, Qualitative and Quantitative Fit Testing Procedures, Medical Questionnaires, and Interpretation

and Classification of Chest Roentgenograms, respectively, are mandatory for asbestos-abatement activities and are hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0819 Discharge of hazardous substances.

In the event of a discharge, spill or release of any hazardous substance, including hazardous waste, from any facility where hazardous substances are disposed, kept for use, or stored, the owner or operator of such facility shall be responsible for the clean-up and remediation of the affected areas. In addition, the owner or operator shall:

- (1) Take immediate and appropriate action to contain the discharge or release so that hazardous substances are prevented from reaching the waters of American Samoa or any conveyance thereto;
- (2) Take other immediate and appropriate action to protect human health, welfare and the environment, like erecting barriers, posting warning signs, or diking off the exposed areas;
- (3) Notify the AS-EPA, TEMCO, Public Health and the Department of Public Safety (DPS) of the discharge or release. The notice required by this section shall include:
 - (A) The chemical name or identity of any substance involved in the release;
 - (B) An estimate of the quantity of any such substance released;
 - (C) The time and duration of the release;
 - (D) The medium or media into which a release occurred;
 - (E) Any known or anticipated acute or chronic health risks associated with the emergency, and, where appropriate, advice regarding medical attention for exposed individuals;
 - (F) Proper precautions to take as a result of the release, including evacuation; and
 - (G) Actions already taken to respond and to contain the release.

- (4) Take any other action required by the facility's emergency response plan required under section 24.0812 of these standards and regulations.

History: Rule 02-01, eff 30 Aug 01.

24.0820 Hazardous waste management and emergency response plans.

- (a) Before engaging in any of the activities regulated in Part II of these standards and regulations, generators, transporters and owners or operators of storage and disposal facilities shall develop both a written waste management plan and emergency response plan to minimize the risks to human health and safety and to the environment associated with their activities.
- (b) The plans required under subsection (a) shall be submitted to the executive secretary for approval within 90 days of the effective date of these standards and regulations. If a plan is not complete or the executive secretary finds a plan to be inadequate, the party submitting such plan(s) shall be prohibited from generating, transporting, storing or disposing of hazardous wastes until such plan(s) are completed to the satisfaction of the executive secretary.

History: Rule 02-01, eff 30 Aug 01.

24.0821 Hazardous waste determination.

- (a) A person who generates a solid waste, as defined in this chapter, must determine if that waste is a hazardous waste using the following method:
- (1) First, determine whether the waste is excluded from regulation according to the method set forth in 40 CFR 261.4, which is hereby incorporated by reference;
 - (2) Second, determine if the waste is listed as a hazardous waste in subpart D of 40 CFR part 261, which is hereby incorporated by reference;
 - (3) For purposes of compliance with this chapter, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must determine whether the waste is identified by either:

- (A) testing the waste according to the methods set forth in subpart C of 40 CFR part 261; or
- (B) applying knowledge of the hazard characteristic(s) of the waste in light of the materials or the processes used.

- (b) If a waste is determined to be hazardous, the generator must abide by these standards and regulations as they apply to the particular waste generated, and comply with the provisions of 24.0820 relating to preparation, maintenance and approval of hazardous waste management and emergency response plans.

History: Rule 02-01, eff 30 Aug 01.

24.0822 Manifest requirements-Generators.

- (a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a "Uniform Hazardous Waste Manifest" on USEPA form 8700-22 (Appendix B-1), and, if necessary, on USEPA form 8700-22A (Appendix B-2), according to the instructions in the appendix to 40 CFR 262 (Appendix B-3). Appendices B-1, B-2, and B-3 shall be appended hereto and incorporated by reference in these regulations. The generator shall designate on the manifest a facility permitted to handle that waste described on the manifest.
- (b) The generator must prepare sufficient copies of the manifest to provide the generator, each transporter, and the designated facility with one copy each. For each manifest used by the generator, the generator must:
- (1) sign the manifest certification by hand;
 - (2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;
 - (3) retain one copy of the manifest
- (c) In the event the transporter is unable to deliver the waste to the designated facility, the generator must designate another facility or instruct the transporter to return the waste.

- (d) For shipments of hazardous waste that are transported to the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.
- (e) Content of the manifest. The manifest prepared by the generator shall contain the following information:
 - (1) Type of waste.
 - (2) Name of waste.
 - (3) Hazard class of waste.
 - (4) Amount of waste in gallons or pounds.
 - (5) Information on compatibility of hazardous wastes.
 - (6) Hazardous-waste code.
 - (7) Flashpoint of waste.
 - (8) Ph of waste.
 - (9) Handling precautions.
 - (10) Cleanup procedures.
 - (11) Required response equipment.
 - (12) Emergency telephone numbers and contact points for local fire, environment and safety personnel.
 - (13) Name of the generator of the waste.
 - (14) Special storage requirements.
 - (15) Disposal restrictions or requirements.
 - (16) Designated destination of the waste and alternative destination.

History: Rule 02-01, eff 30 Aug 01.

24.0823 Pre-transport requirements.

- (a) Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable United States

Department of Transportation (USDOT) regulations on packaging under 49 CFR parts 173, 178, and 179.

- (b) Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable USDOT regulations on hazardous materials under 49 CFR Part 172.

- (c) Marking.

- (1) Before transporting or offering hazardous waste for transport off-site, a generator must mark each package of hazardous waste in accordance with the applicable USDOT regulations on hazardous materials under 49 CFR part 172.

- (2) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

“HAZARDOUS WASTE – Federal Law Prohibits Improper Disposal. If found, contact the nearest public safety authority or the ASEPA.

Generator’s Name and Address

Manifest Document Number
_____.”

- (d) Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to USDOT regulations for hazardous materials under 49 CFR part 172, subpart F.

- (e) Accumulation.

- (1) A generator may accumulate hazardous waste on-site for 180 days or less without a permit from the commission provided that the waste is placed:

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- (A) In containers and the generator complies with subpart W of 40 CFR part 265; and or
- (B) In tanks and the generator complies with subpart J of 40 CFR part 265, except section 265.197(c) and section 265.200; and or
- (C) On drip pads and the generator complies with subpart W of 40 CFR part 265 and maintains the following records at the facility:
 - (i) A description of the procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and
 - (ii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and sump or collection system and the date and time of removal.
- (2) A generator who accumulates hazardous waste for more than 180 days is an operator of a storage facility and is therefore subject to the requirements of 40 CFR parts 264 and 265 and the permit requirements of 40 CFR part 270, unless he has been granted an extension in writing by the executive secretary. Such extension may be granted by the executive secretary if hazardous wastes must remain on-site for longer than 180 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive secretary on a case-by-case basis.
- (3) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste (listed in Appendix A and in 40 CFR 261.33(f)) in containers at or near the point of generation where wastes initially accumulate without complying with paragraph (e)(1) of this section, provided that he:
 - (A) uses only containers which are free of leaks and in good condition; and
 - (B) uses containers which are lined with materials which will not react with, and are otherwise compatible with, the hazardous wastes to be stored; and
 - (C) ensure that containers holding hazardous wastes are always closed during storage, except when it is necessary to add or remove waste;
 - (D) marks his containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.
- (4) A generator who accumulates either hazardous waste or acutely hazardous waste in excess of the amounts set forth in subparagraph (3) of this section at or near the point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (e)(1) of this section and any other applicable sections of this chapter. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.
- (f) Hazardous waste residues in containers. Hazardous waste remaining in an empty container or in an inner liner removed from an empty container is not subject to regulation under the hazardous waste requirements of these standards and regulations. A container shall be considered “empty” if:
 - (1) the container held a quantity of non-acute hazardous waste and all wastes have been removed that can be removed using the common practices for removing materials from that type of container (i.e. pouring, pumping, and aspirating), and no more than 2.5 centimeters (1 inch) of residue remains on the bottom of the inner liner; or
 - (2) No more than 3 percent by weight of the total capacity of the container remains in the container or the inner if the container is larger than 110 gallons, or less; or

- (3) No more than 0.3 percent by weight of the total capacity of the container remains in the container or the inner liner if the container is larger than 110 gallons; or
- (4) The container previously held a compressed gas and the pressure in the container approximates atmospheric pressure; or
- (5) The container previously held an acute hazardous waste and one of the following applies:
 - (A) The container or inner liner has been triple-rinsed with a solvent capable of removing the commercial chemical product or the manufacturing chemical intermediate (a chemical used in manufacturing a commercial chemical product); or
 - (B) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or in tests conducted by the generator, to achieve an equivalent level of removal; or
 - (C) In the case of a container, the inner liner that prevented the commercial chemical product or the manufacturing chemical intermediate from contacting the container has been removed.

History: Rule 02-01, eff 30 Aug 01.

24.0824 Recordkeeping and reporting.

- (a) A generator must keep a copy of each manifest signed in accordance with section 24.0822 or three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.
- (b) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with section 24.0821 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage or disposal.

- (c) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 90 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the executive secretary.

History: Rule 02-01, eff 30 Aug 01.

24.0825 Exports of hazardous wastes.

The export of hazardous wastes by a generator shall be allowed in accordance with the requirements of 40 CFR part 262 subpart E, which are hereby incorporated by reference in these standards and regulations.

History: Rule 02-01, eff 30 Aug 01.

24.0826 Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this chapter, provided that he triple rinses each emptied pesticide container and otherwise complies with the provisions of 24.0601 et seq. ASAC.

History: Rule 02-01, eff 30 Aug 01.

24.0830 Scope.

- (a) The regulations in this subpart establish standards that apply to persons transporting hazardous waste within this territory, is such transportation requires use of a manifest. Persons transporting hazardous waste out of this territory or between this territory and the United States must comply with the provisions of 40 CFR part 263.
- (b) These regulations do not apply to on-site transportation of hazardous waste by generators or by owners or operators or permitted hazardous waste management facilities.

History: Rule 02-01, eff 30 Aug 01.

24.0831 Manifest requirements-Transporters.

- (a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a

manifest signed in accordance with the provisions of 24.0822.

- (b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.
- (c) The transporter must ensure that the manifest accompanies the hazardous waste.
- (d) A transporter who delivers a hazardous waste to another transporter or to the designated facility must:
 - (1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and
 - (2) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and
 - (3) Retain one copy of the manifest in accordance with section 24.0833; and
 - (4) Give the remaining copies of the manifest to the accepting transporter or designated facility.

History: Rule 02-01, eff 30 Aug 01.

24.0832 Compliance with the manifest.

- (a) The transporter must deliver the entire quantity of the hazardous waste that he has accepted from a generator or another transporter to:
 - (1) the designated facility listed on the manifest; or
 - (2) the alternate designated facility if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or
 - (3) the next designated transporter; or
 - (4) the place outside this territory designated by the generator.

- (b) If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

History: Rule 02-01, eff 30 Aug 01.

24.0833 Recordkeeping

A transporter of hazardous waste must keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

History: Rule 02-01, eff 30 Aug 01.

24.0834 Hazardous waste discharges.

- (a) In the event of a discharge of hazardous waste during transportation, the transporter shall take appropriate immediate action to protect human health and the environment, e.g., notify the local response authorities and dike off the discharge area.
- (b) An air, highway or water transporter who has discharged hazardous waste within this territory must:
 - (1) notify Public Health, DPS, TEMCO, and the ASEPA; and
 - (2) report in writing as required under 49 CFR section 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590;
 - (3) give notice, if required by 49 CFR 171.15, to the National Response Center (800-424-8802 or 202-426-2675), and
 - (4) take any other action required by the emergency response plan required under section 24.0820 of this chapter.
- (c) A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by federal or local officials so that the hazardous waste

discharge no longer presents a hazard to human health or the environment.

History: Rule 02-01, eff 30 Aug 01.

24.0840 Treatment, storage and disposal facilities.

- (a) An owner or operator of a facility which receives hazardous waste for treatment, disposal, or storage for periods in excess of thirty (30) days shall register with the Administrator of the USEPA and comply with the requirements set forth in 40 CFR part 264, which are hereby incorporated by reference in these standards and regulations.
- (b) Manifested shipments of hazardous wastes may be stored in a transfer facility for periods no longer than thirty (30) days, provided the temporary facility complies with 24.0810 and 24.0822 and:
 - (1) Each container is clearly marked to identify its contents and the date the temporary storage period began;
 - (2) Owners and operators of such facilities comply with the operating record requirements set forth in 40 CFR 264.73 or 265.73 and store the containers in accordance with the requirements of 24.0824(e); and
 - (3) such facilities prepare and maintain the emergency response plan required under section 24.0821 of these standards and regulations.
- (c) The following hazardous wastes which are recycled as follows are not “disposed” for purposes of these rules:
 - (1) Hazardous wastes burned for energy recovery in boilers, industrial furnaces and electric generators, provided:
 - (A) such wastes are considered to be hazardous solely because they possess the characteristic of ignitability; or
 - (B) such wastes are considered hazardous because the wastes to be burned are a product of mixing in which the

hazardous constituent appears in analysis to be insignificant and not to pose a threat to public health and safety and the environment when burned.

- (2) Used oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers, incinerators, and electrical generators.
- (3) Recyclable materials from which precious metals are reclaimed.
- (4) Spent lead acid batteries that are reclaimed.

History: Rule 02-01, eff 30 Aug 01.

24.0841 Land disposal of hazardous wastes—Prohibition—Exceptions.

- (a) Except as provided in subsections (b), (c) and (d) of this section, land disposal of hazardous wastes is prohibited in this territory.
- (b) Small quantities of non-acute hazardous wastes not to exceed 100 Kg may be land-disposed with the express, written permission of the executive secretary if:
 - (1) an extract of the waste is tested in accordance with the provisions of 24.0842(a) and the extract meets the requirements of 24.0842(a); or
 - (2) the waste is treated using an appropriate treatment technology under 24.0842(b) and the constituent concentrations in the treatment residue does not exceed the treatment standards required by 24.0842(b).
- (c) Persons granted an exemption by the USEPA pursuant to a petition under 40 CFR 268.6 with respect to those wastes or units covered by the petition may land dispose of hazardous wastes, provided they give written notice to the executive secretary.
- (d) Small quantities of paints and asbestos not to exceed 100 Kg may be land disposed so long as:
 - (1) paints are solidified using absorbents or by exposure to air; and

- (2) asbestos is placed in leak-proof bags, labeled and buried in an area separate and apart from other types of wastes.

History: Rule 02-01, eff 30 Aug 01.

24.0842 Treatment standards.

- (a) A hazardous waste identified in 40 CFR 268.41 may be land disposed in accordance with 24.0841 if an extract from the waste or treatment residue developed using the test method provided by 40 CFR part 61 appendix II does not exceed the value shown in Table CCWE of 40 CFR 268.41 for the waste tested.
- (b) A hazardous waste for which a treatment technology is specified under 40 CFR 268.42(a) may be land disposed in accordance with 24.0841 after it is treated using that specified technology or an equivalent treatment method approved by the executive secretary. The executive secretary may approve an alternative treatment procedure only after consulting with and obtaining approval in writing from USEPA.
- (c) A hazardous waste identified in 40 CFR 268.43 may be land disposed in accordance with 24.0841 if the constituent concentrations in the waste or treatment residue does not exceed the value shown in Table CCW of 40 CFR 268.43 for any hazardous constituents listed in Table CCW for that waste.
- (d) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.
- (e) If a hazardous waste extract or treatment residue does not meet the standards required by this section, land disposal is prohibited.
- (f) If a treatment standard for a particular hazardous waste is not provided by this section, land disposal of that waste is prohibited absent the express, written permission of the executive secretary.
- (g) 40 CFR sections 268.41 and 40 CFR 268.43 and tables thereto shall be incorporated by reference in these standards and regulations.

History: Rule 02-01, eff 30 Aug 01.

24.0850 Definitions.

As used in this Part:

- (1) “Class location” means, for onshore pipelines, the geographic area that extends 220 yards on either side of the centerline of any continuous ¼ mile length of pipeline. The class location designations referred to in this part shall be those set forth in 49 CFR 192.5(b) through (f), which are hereby incorporated by reference.
- (2) “Distribution Line” means a pipeline other than a gathering or transmission line.
- (3) “Gas” means natural gas, flammable gas, or gas which is toxic or corrosive.
- (4) “Gathering Line” means a pipeline that transport gas from a current production facility to a transmission line or main.
- (5) “High pressure distribution system” means a distribution system in which the gas pressure in the main is higher than the pressure provided to the customer.
- (6) “Low pressure distribution system” means a distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer.
- (7) “Main” means a distribution line that serves as a common source of supply for more than one service line.
- (8) “Maximum actual operating pressure” means the maximum pressure that occurs during normal operations over a period of 1 year.
- (9) “Maximum allowable operating pressure” means the maximum pressure at which a pipeline or a segment of pipeline may be operated under this Part.
- (10) “Offshore” means beyond the line of ordinary low water along that portion of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters.
- (11) “Operator” means a person who engages in the transportation of gas.

- (12) “Person” means any individual, firm, joint venture, partnership, corporation, association, State, municipality, territory, cooperative association, and including any trustee, receiver, assignee, or personal representative thereof.
- (13) “Pipe” means any pipe or tubing used in the transportation of gas, including pipe-type holders.
- (14) “Pipeline” means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies.
- (15) “Pipeline facility” means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.
- (16) “Service line” means a distribution line that transport gas from a common source of supply to an (a) customer meter or the connection to a customer’s piping, whichever is farther downstream, or (b) the connection to a customer’s piping if there is no customer meter. A customer meter is the meter that measures the transfer of gas from an operator to a consumer.
- (17) “SMYS” means specified minimum yield strength that is:
- (A) For steel pipe manufactured in accordance with a listed specification, the yield strength specified as a minimum in that specification; or
 - (B) For steel pipe manufactured in accordance with an unknown or unlisted specification, the yield strength determined in accordance with 49 CFR 192.107(b), which is hereby incorporated by reference.
- (18) “Transmission line” means a pipeline, other than a gathering line, that:
- (A) Transport gas from a gathering line or storage facility to a distribution center or storage facility;
 - (B) Operates at a hoop stress of 20 percent or more of SMYS; or
 - (C) Transports gas within a storage field.
- (19) “Transportation of gas” means the gathering, transmission, or distribution of gas by pipeline or the storage of gas, in or affecting interstate or foreign commerce.

History: Rule 02-01, eff 30 Aug 01.

24.0851 Scope and applicability.

- (a) This Part prescribes minimum safety requirements for pipeline facilities and the transportation by pipeline of natural gas, liquefied natural gas, and hazardous liquids inside the territorial limits of American Samoa.
- (b) No person may operate a pipeline facility, segment of pipeline, or a relocated, modified or replaced segment of a pipeline unless:
 - (1) the pipeline or segment has been designed, installed, constructed, initially inspected, and initially tested in accordance with this Part; and
 - (2) the pipeline operator maintains, modifies as appropriate, and follows the plans, procedures, and programs required to be followed under this Part.

History: Rule 02-01, eff 30 Aug 01.

24.0852 Pipeline materials.

- (a) As further provided in this section, materials used for pipe and components must be:
 - (1) able to maintain the structural integrity of the pipeline under temperature and other environmental conditions that may be anticipated.
 - (2) chemically compatible with any gas or liquid that they transport and with any other material in the pipeline with which they are in contact; and
 - (3) qualified in accordance with the requirements of this section.
- (b) To qualify for use under this chapter, steel pipe must meet the standards set forth under 49 CFR

192.55 and the design standards set forth in 49 CFR 192.105-115, inclusive, which are hereby incorporated by reference.

- (c) Plastic pipe may be used under this chapter if it qualifies for use under the provisions of 49 CFR 193.59 and if it meets the design standards set forth in 49 CFR 192.121 through 192.123, inclusive, which are hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0853 Pipeline components-Design

- (a) Each component of a pipeline must be able to withstand operating pressures and other anticipated loadings without impairment of its serviceability with unit stresses equivalent to those allowed for comparable materials in pipe in the same location and kind of service. However, if design based upon unit stresses is impractical for a particular component, design may be based upon a pressure rating established by the manufacturer by pressure testing that component or a prototype of the component.
- (b) Each component of a pipeline including, but not limited to, valves, flanges, fittings, tapping, metallic components, branch connections, extruded outlets, supports and anchors, and compressor stations, among others, shall meet the standards set forth for such components in Subpart D of 49 CFR Part 192, which is hereby incorporated in these rules.

History: Rule 02-01, eff 30 Aug 01.

24.0854 Joining of materials in pipelines.

- (a) Welding
 - (1) Steel welding must be performed by a qualified welder in accordance with welding procedures qualified to produce welds meeting the requirements of 49 CFR 192 Subpart E. The quality of the test welds used to qualify the procedure shall be determined by destructive testing.
 - (2) Welding procedures must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used.

- (3) Welds shall be inspected and tested in a proper manner according to the provisions of 49 CFR 192.241 and 192.243, and, if defects are found, repaired in accordance with 49 CFR 192.245.

(b) Joints

- (1) The pipeline must be designed and installed so that each joint will sustain the longitudinal pullout or thrust forces caused by contraction or expansion of the piping or by anticipated external or internal loading.
- (2) Each joint must be made in accordance with written procedures that have been proven by test or experience to produce strong gas tight joints.
- (3) Each joint must be installed and inspected in accordance with the provisions of 49 CFR Part 192 subpart F, which is hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0855 General construction requirements.

- (a) Inspection. Each transmission line or main must be inspected to ensure that it is conducted in accordance with this section, and each component must be inspected to insure that it has not sustained any damage that could impair its serviceability.
- (b) Repair. Upon inspection and discovery each imperfection or damage which impairs the serviceability of a pipe shall be repaired in accordance with 49 CFR 192.309 and 192.311, which are hereby incorporated by reference.
- (c) Bends and elbows in pipe. Each field bend, wrinkle bend, and wrought steel welding elbow and transverse segments of such elbows shall be comply with the provisions of 49 CFR 192.313 and 192.315, which are hereby incorporated by reference.
- (d) Hazard Protection.
 - (1) The operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides or other hazards that may cause

the pipeline to move or to sustain abnormal loads. In addition, the operator must take all practicable steps to protect offshore pipelines from damage by mudslides, water currents, hurricanes, ship anchors and fishing operations.

- (2) Each aboveground transmission line or main, not located offshore or in inland navigable waters, must be protected from accidental damage by vehicular traffic, either by placement at a safe distance from traffic or by installing barricades.
 - (3) Pipelines, including pipe risers, on each platform located offshore or in inland navigable waters, must be protected from accidental damage by vessels.
- (e) Installation of pipe.
- (1) Pipe to be installed in a ditch shall comply with the provisions of 49 CFR 192.319, which is hereby incorporated by reference.
 - (2) Plastic pipe shall be installed in accordance with 49 CFR 192.321, which is hereby incorporated by reference.
- (f) Casings. Each casing used on a transmission line or main under a highway must comply with the following:
- (1) The casing must be designed to withstand the superimposed loads;
 - (2) If there is a possibility of water entering, the ends must be sealed;
 - (3) If the ends of an unvented casing are sealed and the sealing is strong enough to retain the maximum allowable operating pressure of the pipe, the casing must be designed to hold this pressure at a stress level of not more than 72 % of SMYS;
 - (4) If vents are installed on a casing, the vents must be protected from the weather to prevent water from entering the casing.
- (g) Underground clearance.
- (1) Each transmission line must be installed with at least 12 inches of clearance from any

other underground structure not associated with the transmission line. If this clearance cannot be attained, the transmission line must be protected from damage that might result from the proximity of the other structure.

- (2) Each main must be installed with enough clearance from any other underground structure to allow proper maintenance and to protect against damage that might result from proximity to other structures or potential hazards.
- (h) Cover. Each buried transmission line shall be installed with the minimum level of cover as provided under 49 CFR 192.327, which is hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0856 Corrosion control-External.

- (a) Buried or submerged pipelines.
 - (1) Except as provided in paragraphs (2) and (3) of this subsection, each buried or submerged pipeline must be protected against external corrosion using appropriate corrosion control methods, including the following:
 - (A) It must have an external protective coating meeting the requirements of subsection (c) of this section;
 - (B) It must have a cathodic protection system designed to protect the pipeline in accordance with subsection (d) of this section, installed and placed in operation within 1 year after completion of construction;
 - (C) It must not contain aluminum if that aluminum is exposed to a natural environment with a Ph in excess of 8.0.
 - (2) An operator need not comply with paragraph (1) of this subsection if both of the following requirements are met:
 - (A) The operator can demonstrate by tests, investigation, or experience in the area of application, including, at a

minimum, soil resistivity measurements and tests for corrosion accelerating bacteria, that a corrosive environment does not exist. However, within 6 months of an installation not in compliance with paragraph (1) the operator shall conduct tests, including pipe-to-soil potential measurements with respect to either a continuous reference electrode or an electrode using close spacing, not to exceed 20 feet, and soil resistivity measurements at potential profile peak locations, to adequately evaluate the potential profile along the entire pipeline. If the tests made indicate that a corrosive condition exists, the pipeline must be cathodically protected in accordance with paragraph (1).

- (B) The operator can demonstrate by tests, investigation, or experience that, for a copper pipeline, a corrosive environment does not exist, and for a temporary pipeline having an operating period of less than five years, that any corrosion which may occur will not be detrimental to public safety.
- (3) This subsection does not apply to electrically isolated, metal alloy fittings in plastic pipelines, if:
 - (A) for the size of the fitting to be used the operator can show by test, investigation, or experience in the area of application that adequate corrosion control is provided by the alloy composition; and
 - (B) the fitting is designed to prevent leakage caused by localized corrosion pitting.
- (c) Examination of buried and exposed pipeline. Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the coating is deteriorated. If external corrosion is found,

remedial action must be taken to the extent required by the rules adopted under 24.0859.

- (d) Protective coating.
 - (1) Each external protective coating, whether conductive or insulating, applied for the purpose of external corrosion control must:
 - (A) Be applied on a properly prepared surface;
 - (B) Have sufficient adhesion to the metal surface to effectively resist underfilm migration of moisture;
 - (C) Be sufficiently ductile to resist cracking;
 - (D) Have sufficient strength to resist damage due to handling and soil stress; and
 - (E) Have properties compatible with any supplemental cathodic protection.
 - (2) Each external protective coating which is an electrically insulating type must also have low moisture absorption and high electrical resistance.
 - (3) Each external protective coating must be inspected just prior to lowering the pipe into the ditch and backfilling, and any damage detrimental to effective corrosion control must be repaired.
 - (4) If coated pipe is installed by boring, driving, or other similar method, precautions must be taken to minimize damage to the coating during installation.
- (e) Cathodic protection.
 - (1) Each cathodic protection system required by this subpart must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in Appendix D of 49 CFR 192 Subpart I, which is hereby incorporated by reference. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to

that provided by compliance with one or more of these criteria.

- (2) If amphoteric metals are included in a buried or submerged pipeline containing a metal of different anodic potential, then:

- (A) The amphoteric metals must be electrically isolated from the remainder of the pipeline and cathodically protected; or

- (B) The entire buried or submerged pipeline must be cathodically protected at a cathodic potential that meets the requirements of appendix D of 49 CFR 192 Subpart I.

- (3) The amount of cathodic protection must be controlled so as not to damage the protective coating or the pipe.

(f) Monitoring.

- (1) Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of this section.
- (2) Each cathodic protection rectifier or other impressed current power source must be inspected six times each calendar year, but with intervals not exceeding 2 and ½ months, to insure that it is operating properly.
- (3) Each reverse current switch, each diode, and each interference bond whose failure would jeopardize structure protection must be electronically checked at least once each calendar year, but with intervals not exceeding 15 months.
- (4) Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.
- (5) After the initial evaluation required by subsections (a)(2) and (a)(3) of this section, each operator shall, at intervals not exceeding 3 years, reevaluate its

unprotected pipelines in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where electrical survey is impractical, by the study of corrosion and leak history records, by leak detection survey, or by other means.

(g) Electrical isolation.

- (1) Each buried or submerged pipeline must be electrically isolated from other underground metallic structures, unless the pipeline and the other structures are electrically interconnected and cathodically protected as a single unit.
- (2) One or more insulating devices must be installed where electrical isolation of a portion of a pipeline is necessary to facilitate the application of corrosion control.
- (3) Except for unprotected copper inserted in ferrous pipe, each pipeline must be electrically isolated from metallic casings that are part of the underground system. However, if isolation is not achieved because it is impractical, other measure must be taken to minimize corrosion of the pipeline inside the casing.
- (4) Inspection and electrical tests must be made to assure that electrical isolation is adequate.
- (5) An insulating device may not be installed in an area where a combustible atmosphere is anticipated unless precautions are taken to prevent arcing.
- (6) Where a pipeline is located in close proximity to electrical transmission tower footings, ground cables or counterpoise, or in other areas where fault currents or unusual risks of lightning may be anticipated, it must be provided with protection against damage due to fault currents or lightning, and protective measures must also be taken at insulating devices.

- (h) Testing. External corrosion control test stations and test leads shall be established and maintained in accordance with the provisions of 49 CFR 192.469 and 192.471, which are hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0857 Corrosion control—Internal

(a) General.

- (1) Corrosive gas may not be transferred by pipeline, unless the corrosive effect of the gas on the pipeline has been investigated and steps have been taken to minimize internal corrosion.
- (2) Whenever any pipe is removed from a pipeline for any reason, the internal surface must be inspected for evidence of corrosion. If internal corrosion is found—
 - (A) The adjacent pipe must be investigated to determine the extent of internal corrosion;
 - (B) Replacement must be made to the extent required by the rules incorporated under 24.0859;
 - (C) Steps must be taken to minimize the internal corrosion.
- (3) Gas containing more than 0.1 grain of hydrogen sulfide per 100 standard cubic feet may not be stored in pipe-type or bottle-type holders.

- (b) Monitoring. If corrosive gas is being transported, coupons or other suitable means must be used to determine the effectiveness of the steps taken to minimize internal corrosion. Each coupon or other means of monitoring internal corrosion must be checked two times each calendar year, but with intervals not exceeding 8 months.

History: Rule 02-01, eff 30 Aug 01.

24.0858 Corrosion control—Atmospheric corrosion.

- (a) For pipelines installed after 1971, each above-ground pipeline or portion of a pipeline that is exposed to the atmosphere must be cleaned or

coated or jacketed with a material suitable for the prevention of atmospheric corrosion. An operator need not comply with this paragraph, if the operator can demonstrate by test, investigation, or experience in the area of application, that a corrosive atmosphere does not exist.

- (b) For pipelines installed before August 1, 1971, each operator having an above-ground or portion of a pipeline that is exposed to the atmosphere shall;
 - (1) Determine the areas of atmospheric corrosion on the pipeline;
 - (2) If atmospheric corrosion is found, take remedial measures to the extent required by the applicable provisions of the rules adopted under 24.0859.
 - (3) Clean and either coat or jacket the areas of atmospheric corrosion on the pipeline with a material suitable for the prevention of atmospheric corrosion.
- (c) After meeting the requirements of this section, each operator shall, at intervals not exceeding 3 years for onshore pipelines and at least once each calendar year, but with intervals not exceeding 15 months, for offshore pipelines, reevaluate each pipeline that is exposed to the atmosphere and take remedial action whenever necessary to maintain protection against atmospheric corrosion.

History: Rule 02-01, eff 30 Aug 01.

24.0859 Corrosion control—Remedial measures.

Each operator of a segment of pipeline shall take, as applicable; the remedial measures required under 49 CFR 192.483 through 192.489, inclusive, which are hereby incorporated by reference in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0860 Corrosion control—Records.

- (a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Records or maps

showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

- (b) Each record or map required by paragraph (a) of this section must be retained for as long as the pipeline remains in service.
- (c) Each operator shall maintain a record of each test, survey, or inspection required by any rule pertaining to corrosion control in sufficient to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. These records must be retained for at least 5 years, except that records related to 24.0856(e) and 24.0857(a) must be retained for as long as the pipeline remains in service.

History: Rule 02-01, eff 30 Aug 01.

24.0865 Test Requirements—General.

- (a) No person may operate a new segment or pipeline, or return to service a segment of pipeline that has been relocated or replaced, until:
 - (1) It has been tested in accordance with these standards and regulations to substantiate the maximum allowable operating pressure; and
 - (2) Each potentially hazardous leak has been located and eliminated.
- (b) The test medium must be liquid, air, natural gas, or inert gas that is:
 - (1) Compatible with the material of which the pipeline is constructed;
 - (2) Relatively free of sedimentary materials; and
 - (3) Except for natural gas, nonflammable.
- (c) Except as provided in 24.0871(a), if air, natural gas, or inert gas is used as the test medium, the following maximum hoop stress limitations apply:

Class Location	Maximum hoop stress allowed as percentage of SMYS
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	Natural Gas	Air or inert gas
1.....	8080	
2.....	3075	
3.....	3050	
4.....	3040	

- (d) Each joint used to tie in a test segment of pipeline is excepted from the specific test requirements of these standards and regulations, but each non-welded joint must be leak tested at not less than its operating pressure.

History: Rule 02-01, eff 30 Aug 01.

24.0866 Test requirements—Pipelines.

- (a) Steel pipelines to operate at 30 percent or more of SMYS.
 - (1) Except for service lines, each segment of a steel pipeline that is to operate at a hoop stress of 30 percent or more SMYS must be strength tested in accordance with this subsection to substantiate the proposed maximum operating pressure. In addition, if there is a building intended for human occupancy within 300 feet of a pipeline, a segment of pipeline not less than 600 feet long must be hydrostatic tested to a test pressure of at least 125 percent of maximum operating pressure.
 - (2) Except as provided in subsection (a)(3) of this section, the strength test must be conducted by maintaining the pressure at or above the test pressure for at least 6 hours.
 - (3) For fabricated units, components, and short sections of pipe for which a post installation test is impractical, a pre-installation strength test must be conducted by maintaining the pressure at or above the test pressure for at least 4 hours.
- (b) Pipelines to operate at hoop stress less than 30 percent of SMYS and at or above 100 psi.
 - (1) The pipeline operator shall use a test procedure that will ensure discovery of all

potentially hazardous leaks in the segment being tested.

- (2) If, during the test, the segment is to stressed to 20 percent or more of SMYS and natural gas, inert gas, or air is the test medium—

- (A) A leak test must be made at a pressure between 100 p.s.i. (689 kpa) gage and the pressure required to produce a hoop stress of 20 percent of SMYS; or

- (B) The line must be walked to check for leaks while the hoop stress is held at approximately 20 percent of SMYS.

- (4) During testing the pressure must be maintained at or above the test pressure for at least 1 hour.

- (c) Pipelines to operate below 100 p.s.i. (689 kpa) gage.

- (1) Except for service lines and plastic pipelines, each segment of a pipeline to be operated below 100 p.s.i (689 kpa) gage must be leak tested in accordance with the following:

- (A) The test procedure used must ensure discovery of all potentially hazardous leaks in the segment being tested.

- (B) Each main that is to be operated at less than 1 p.s.i. (6.9 kpa) gage must be tested to at least 10 p.s.i. (69kpa) gage and each main to be operated at or above 1 p.s.i. (6.9 kpa) gage must be tested to at least 90 p.s.i (621 kpa) gage.

- (d) Plastic pipelines.

- (1) Each segment of a plastic pipeline must be tested in accordance with this subsection.

- (2) The test procedure must insure discovery of all potentially hazardous leaks in the segment being tested.

- (3) The test pressure must be at least 150 percent of the maximum operating pressure or 50 p.s.i. (345 kPa) gage, whichever is greater. However, the maximum test

pressure may not be more than three times the pressure determined under 49 CFR 192.121, which is hereby incorporated by reference, and at a temperature not less than the pipe temperature during the test.

- (4) During the test, the temperature of thermoplastic material may not be more than 100 deg. F (38 deg. C), or the temperature at which the material's long term hydrostatic strength has been determined under the listed specification, whichever is greater.

- (e) Service lines.

- (1) Each segment of a service line (other than plastic) must be leak tested in accordance with this section before being placed in service. If feasible, the service line connection to the main must be included in the test; if not feasible, it must be given a leakage test at the operating pressure when placed in service.

- (2) Each segment of a service line (other than plastic) intended to be operated at a pressure of at least 1 p.s.i (276 kPa) gage but not more than 40 p.s.i (276 kPa) gage must be given a leak test at a pressure of not less than 50 p.s.i (345 kPa) gage.

- (3) Each segment of a service line (other than plastic) intended to be operated at pressures of more than 40 p.s.i (276 kPa) gage must be tested to at least 90 p.s.i (621 kPa) gage, except that each segment of a steel service line stressed to 20 percent or more of SMYS must be tested in accordance with paragraph (b) of this section.

- (f) Records. Each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under paragraphs (a) and (b) of this section. The record must contain at least the following information:

- (1) The operator's name, the name of the operator's employee responsible for making the test record, and the name of any test company used.

- (2) Test medium used.
- (3) Test pressure.
- (4) Test duration.
- (5) Pressure recording charts, or other record of pressure readings.
- (6) Elevation variations, whenever significant for the particular test.
- (7) Leaks and failures noted and their disposition.

History: Rule 02-01, eff 30 Aug 01.

24.0867 Upgrading.

No operator may increase the maximum allowable operating pressures for a pipeline without complying with the regulations set forth in 49 CFR 192.553 through 192.557, inclusive, which are hereby incorporated by reference in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0870 Operations—General Provisions.

- (a) No person may operate a segment of pipeline unless it is operated in accordance with this section and sections 24.0881 through 24.0883.
- (b) Each operator shall keep records necessary to administer the procedures established under 24.0882.
- (c) The commission may require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

History: Rule 02-01, eff 30 Aug 01.

24.0871 Operations—Procedural manual.

- (a) Each operator shall prepare and follow for each pipeline a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. Appropriate parts of the manual shall be kept at locations where operations and maintenance activities are conducted.

- (b) The manual required by this section must include all of the elements set forth in sections 49 CFR 192.605(b) and (c), which are hereby incorporated by reference in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0872 Operations—Change in class location.

- (a) Change in class location—required study. When an increase in population density indicates a change in class location for a segment of an existing steel pipeline operating at a hoop stress that is greater than 40 percent of SMYS, or indicates that the hoop stress corresponding to the established maximum allowable operating pressure for a segment of existing pipeline is not commensurate with the present class, the operator shall make a study to determine:

- (1) The present class location for the segment involved;
- (2) The design, construction, and testing procedures followed in the original construction, and a comparison of these procedures with those required for the present class location by the applicable provisions of this part;
- (3) The physical condition of the segment to the extent it can be ascertained from available records;
- (4) The operating and maintenance history of the segment;
- (5) The maximum actual operating pressure and the corresponding hoop stress, taking pressure gradient into account for the segment of pipeline involved;
- (6) The actual area affected by the population density increase, and physical barriers or other factors which may limit further expansion of the more densely populated area.

- (b) Change in class location—Confirmation or revision of maximum allowable operating pressure. If the hoop stress to the established maximum allowable operating pressure of a segment of pipeline is not commensurate with the present class location, and the segment is in

satisfactory physical condition, the maximum allowable operating pressure of that segment of pipeline must be confirmed or revised according to the requirements set forth in section 49 CFR 192.611, which is hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0873 Operations—Surveillance and damage prevention.

- (a) Continuing surveillance.
 - (1) Each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.
 - (2) If a segment of pipeline is determined to be in unsatisfactory condition no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with 24.0886.

(b) Damage prevention.

Each operator of a buried pipeline must carry out a written program for the prevention of damage to that pipeline from excavation activities. This program shall include, at a minimum:

- (1) The identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located;
- (2) Provides for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program:
 - (A) The program’s existence and purpose;

- (B) How to learn the location of underground pipelines before excavation activities are begun.

- (3) Provide a means of receiving and recording notification of planned excavation activities.
- (4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify their markings;
- (5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as possible, the activity begins;
- (6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities.
 - (A) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and
 - (B) In the case of blasting, any inspection must include leakage surveys.

History: Rule 02-01, eff 30 Aug 01.

24.0874 Operations—Emergency plans and public education.

- (a) Each operator shall establish written procedures to minimize the hazard resulting from a gas pipeline emergency. At a minimum, the procedures must substantially comply with those set forth in 49 CFR 192.615, which is hereby incorporated by reference.
- (b) Each operator shall establish a continuing education program to enable customers, the public, appropriate government organizations, and persons engaged in excavation activities to recognize a gas pipeline emergency for the purpose of reporting it to public officials. The program and the media used must be as comprehensive as necessary to reach all persons

at risk and must be conducted in both English and Samoan.

History: Rule 02-01, eff 30 Aug 01.

24.0875 Operations—Allowable operating pressures.

- (a) Steel or plastic pipelines. No person shall operate a segment of a steel or plastic pipeline at a pressure that exceeds the limits set forth in the provisions of 49 CFR 192.619, which are hereby incorporated by reference.
- (b) High-pressure distribution systems. No person may operate a segment of a high-pressure distribution system at a pressure that exceeds the limits established in section 49 CFR 192.621, which is hereby incorporated by reference.
- (c) Low pressure distribution systems.
 - (1) No person may operate a low-pressure distribution system at a pressure high enough to make unsafe the operation of any connected and properly adjusted low-pressure gas burning equipment.
 - (2) No person may operate a low-pressure distribution system at a pressure lower than the minimum pressure at which the safe and continuing operation of any connected and properly adjusted low-pressure gas burning equipment can be assured.

History: Rule 02-01, eff 30 Aug 01.

24.0876 Odorization of gas.

- (a) In order to safeguard the health of persons and the environment, the commission may require that a combustible gas in a distribution line contain a natural odorant, or be odorized, so that at a concentration in air of one-fifth of the lower explosive limit the gas is readily detectable by a person having a normal sense of smell.
- (b) In the concentrations in which it is used, the odorant in combustible gases must comply with the following:
 - (1) The odorant may not be deleterious to persons, materials or pipe.

- (2) The products of combustion from the odorant may not be toxic when breathed nor may they be corrosive or harmful to those materials to which the products of combustion will be exposed.

- (3) The odorant may not be soluble in water to an extent greater than 2.5 parts to 100 parts by weight.

- (c) Equipment for odorization must introduce the odorant without wide variations in the level of odorant.

- (d) Each operator shall conduct periodic sampling of combustible gases to assure the proper concentration of odorant in accordance with this section.

History: Rule 02-01, eff 30 Aug 01.

24.0877 Maintenance of pipelines.

No person may operate a segment of pipeline unless such segment is repaired and maintained in accordance with the provisions of 49 CFR 192.701 through 755, inclusive, which are hereby incorporated by reference in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0880 Scope and applicability.

- (a) This subpart applies to an operator of an onshore oil pipeline that, because of its location, could reasonably be expected to significantly or adversely affect the environment by discharging oil into or on the navigable waters of this territory and/or adjoining shorelines.

- (b) Within 90 days from the effective date of these rules, an operator of a pipeline shall not handle, store, or transport oil in that pipeline unless the operator has prepared and submitted to the commission a response plan meeting the requirements of this subpart.

History: Rule 02-01, eff 30 Aug 01.

24.0881 Response plans.

- (a) Each response plan must plan for resources for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge. For purposes of this subpart, a worst case discharge shall be the

largest foreseeable discharge by volume in barrels which may be released along any segment of pipeline.

- (b) Each response plan must be written in English and translated into Samoan.
- (c) Each response plan must include:
 - (1) A core plan consisting of—
 - (A) An information summary;
 - (B) Immediate notification procedures;
 - (C) Spill detection and mitigation procedures;
 - (D) The name, address, and telephone number of the oil spill response organization(s);
 - (E) Response activities and response resources;
 - (F) Names and telephone numbers of federal and territorial agencies which the operator expects to have pollution control responsibilities and support;
 - (G) Training procedures;
 - (H) Equipment testing;
 - (I) Drill types, schedules and procedures; and
 - (J) Plan review and update procedures.
- (d) Each response plan shall be written in a format which substantially complies with the provisions of 49 CFR 194, Appendix A, “Guidelines for the Preparation of Response Plans” which is hereby incorporated by reference.
- (e) Each response plan shall be retained in the following locations:
 - (1) The operator’s headquarters;
 - (2) At each pump station; and
 - (3) At any other locations where response activities may be conducted.
- (f) Response resources. Each operator shall identify and ensure, by contract or other approved means,

the resources necessary to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent a substantial threat of a worst case discharge.

- (g) Training. Each operator shall conduct training for its employees and agents in accordance with the provisions of 49 CFR 194.117, which is hereby incorporated by reference in this chapter.

History: Rule 02-01, eff 30 Aug 01.

24.0885 Scope and Applicability.

- (a) This subpart prescribes safety standards and accident reporting requirements for pipeline facilities used in the transportation of hazardous liquids. For purposes of this subpart, the term hazardous liquids shall include petroleum, petroleum products, or anhydrous ammonia, but shall not include liquid that is transported in a gaseous state.
- (b) This subpart applies to onshore pipelines facilities and transportation of hazardous liquids associated with those facilities within the territorial limits of American Samoa.

History: Rule 02-01, eff 30 Aug 01.

24.0886 Pipeline transport safety requirements.

- (a) Compatibility. No person may transport any hazardous liquid unless the hazardous liquid is chemically compatible with both the pipeline, including all components, and any other commodity that it may come into contact with while in the pipeline.
- (b) Non-steel pipelines. No person may transport any hazardous liquid through a pipe that is constructed of materials other than steel unless the operator informs the executive secretary of its intention in writing 90 days prior to transporting such hazardous liquid. The notice must include the chemical name, common name, properties, and characteristics of the hazardous liquid along with the material used in construction of the pipeline. If the executive secretary determines that such transport will be unduly hazardous, he will, within 90 days of the receipt of the notice, issue and order to the operator prohibiting the transport of the hazardous liquid in the proposed manner.

- (c) Design requirements. New pipeline systems constructed with steel pipe and pipeline systems to be relocated, replaced or otherwise changed shall comply with the design requirements of 49 CFR Subpart C, which are hereby incorporated by reference in this chapter.
- (d) Construction. New pipeline systems constructed with steel pipe and pipeline systems to be relocated, replaces, or otherwise changed shall comply with the construction requirements set forth in 49 CFR Subpart D, which are hereby incorporated by reference in this chapter.
- (e) Hydrostatic testing. Each new pipeline system, each pipeline system in which pipe has been relocated or replaced, or that part of a pipeline system that has been relocated or replaced, must be hydrostatic tested in accordance with the provisions of 49 CFR Subpart E, which are hereby incorporated by reference in this chapter.
- (f) Operation and maintenance. Operators of pipeline systems transporting hazardous liquids shall abide by the operation and maintenance requirements set forth in 49 CFR Subpart F, which are hereby incorporated by reference.

History: Rule 02-01, eff 30 Aug 01.

24.0887 Accident reporting.

- (a) Any failure in a pipeline system resulting in the following events must be reported in accordance with subsection (b) or this section:
 - (1) Explosion or fire;
 - (2) Loss of 25 or more barrels of liquid;
 - (3) Escape to the atmosphere of more than five barrels a day of highly volatile liquids;
 - (4) Death of any person;
 - (5) Bodily harm to any person resulting in one or more of the following:
 - (A) Loss of consciousness;
 - (B) Necessity to carry the person from the scene for medical treatment;
 - (C) Disability which prevents the discharge of normal duties or the

pursuit of normal activities beyond the date of the accident.

- (6) Estimated property damage to the property of the operator or others, or both, exceeding \$5,000.
- (b) At the earliest practicable moment following discovery of a release of the hazardous liquid transported resulting in an event described in subsection (a), or where a release results in the pollution or discoloration of any surface water or an adjoining shoreline, the operator of the system shall give notice by telephone to the executive secretary, TEMCO, Emergency Medical Services and the Department of Public Safety, as appropriate. Furthermore, within 30 days of an accident set forth in subsection (a), the operator shall prepare and file an accident report with the appropriate agency of the American Samoa Government. The operator shall retain copies of all such reports.
- (c) If the executive secretary, the federal Department of Transportation or any other territorial agency wishes to investigate an accident, the operator involved shall make available to the investigating agency all records and information that in any way pertain to the accident, and shall afford all reasonable assistance in the investigation.

History: Rule 02-01, eff 30 Aug 01.

TITLE 24 – CHAPTER 09 – FISHING

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24.0901 Definitions.

- (1) “Department” means the Department of Marine and Wildlife Resources (A.S.C.A. § 24.0302(1)).
- (2) “Director” means the director of DMWR (A.S.C.A. § 24.0302(2)).
- (3) “Fish” means those species of the classes osteorhthyes, condrichtyes and agnathes that shall not be fished for except as authorized by rule of the Director. The term “fish” includes all stages of development and the body parts of fish species (A.S.C.A. § 24.0302(3)).
- (4) “Shellfish” means those species of marine and freshwater invertebrates that shall not be taken except as authorized by rule of the Director. The term shellfish includes all stages of development and the body parts of shellfish species (A.S.C.A. § 24.0302(5)).
- (5) “Aquarium fish” means any fish or shellfish collected alive and intended for home display or for the commercial aquarium fish industry.
- (6) “Commercial fishing” means any fishing activity in which part or all of the catch is sold or marketed or for which the fisherman receives income as a result of the fishing activity, such as payment for fishing charter, a salary for fishing, or cash for their portion of the catch.
- (7) “Coral” means any living aquatic organism of the subphylum cnidaria that are capable of secreting hard skeletal parts or can incorporate stony secretions within or around their tissues e.g. ermatypic corals, black coral, precious corals, blue coral, organpipe corals, fire corals, lace corals, etc.
- (8) “Deep-water bottom fish” means those species of fish that live on or near the bottom and are taken at depths greater than 200 feet.
- (9) “Drift Gillnet” means any net that is deployed without being staked or otherwise attached to the shore or bottom so that it is able to drift unattached.
- (10) “Fish aggregation device (FAD) ” means any object moored in the offshore waters of American Samoa for the purpose of attracting fish.

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- (11) “Fish habitat” means any organic or inorganic material so configured as to create an environment that attracts, retains or is significantly used by populations of fish and/or shellfish.
- (12) “Fish / Shellfish trap” means any portable or unbaited fish catching apparatus consisting of an enclosure with entrances designed to admit and retain the catch.
- (13) “Fish weir” means any baited or unbaited fish or shellfish catching apparatus consisting of a pocket or trap that is placed in a fixed position.
- (14) “Fishing” means to take or attempt to take fish or shellfish by any means. This includes, but is not limited to, the use of gear such as hook and line, spears, nets, traps, weirs, and prohibited gears such as dynamite and fish poisons.
- (15) “Ornamental shells” means any shellfish collected primarily for the value of their shell.
- (16) “Recreational mooring buoy:” Any buoy or mooring device deployed by the department or the United States Government for the purpose of preventing damage to coral or fish habitat by giving recreational vessels a safe option to anchoring.
- (17) “Subsistence fishing” means any fishing activity where the catch is not sold or marketed but is shared within the family or village structure for the purpose of home consumption.
- (18) “Take” means to harass, harm, pursue, hunt, shoot, wound, kill trap, capture, or collect, or attempt to engage in any such conduct.
- (19) “Traditional fish trap” means any fish or shellfish trap constructed of natural materials in the style of traditional Samoan fish traps (Enu, Faga, Sele, etc.).
- (20) “Traditional surround net” means a large leaf sweep apparatus constructed of natural materials in the style of the traditional Samoan lau.
- (21) “Vessel” means any sort of water craft or float used to transport persons or gear.
- (22) “Waters of American Samoa” means all fresh and brackish waters, reefs, and intertidal zones, as well as marine areas within the U.S. Territorial seas surrounding the islands of American Samoa.
- (23) “Buy” means to purchase, barter, exchange or trade, and includes an offer to buy.
- (24) “Sell” means to exchange or offer to exchange for a price or something of value and includes possession for sale, barter, exchange or trade.
- (25) “SCUBA gear” means the use of a portable and self-contained underwater breathing device, consisting of compressed air tanks and breathing regulator, or any other device used to deliver compressed air to a diver, that allows a diver to successfully remain underwater longer than a person can hold his or her breath.
- (26) “Live rock” means any coral or basalt rock with living marine organisms growing on it.

History: DMWR regs., eff 3 Aug 95.

24.0905 Dealers Records.

- (a) In accordance with 24.0305 A.S.C.A., every seafood dealer shall make a legible record in the form of a receipt in triplicate on forms to be furnished by the department.
- (b) The original signed copy of the receipt shall be delivered to the fisherman at the time of the purchase or receipt of the fish or shellfish. The duplicate copy shall be kept by the dealer or person receiving the fish or shellfish for a period of six months and shall be available for inspection at any time within that period by the department. The triplicate copy shall be delivered to the department on or before the sixteenth day of each month.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0906 Other Required Records – Fishermen, Fish Processors, and Fish Wholesalers.

- (a) Commercial Fishermen shall be required to keep all applicable records in accordance with 24.0306 A.S.C.A.

- (b) Fish processors shall be required to file written reports as required by 24.0307 A.S.C.A.
- (c) Fish wholesalers shall report all information to the department as required by 24.0308 A.S.C.A.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0907 Confidentiality of Records.

In accordance with 24.0309 A.S.C.A., the receipts, reports, or other records filed with the department and the information contained therein, shall be confidential, and the records shall not be public records, and the information contained in the records shall be compiled or published as summaries, so as not to disclose the individual record or business of any person.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0908 Annual Proclamation.

- (a) Each year, the Director of the Department shall issue a proclamation establishing the following for the taking of fish and shellfish:
 - (1) Seasons,
 - (2) Area and gear restrictions,
 - (3) License and permit fees, and
 - (4) Harvest limits.
- (b) Annual proclamations shall be effective beginning on January 1st through December 31st of each year, or until superseded by further proclamation of the Director.
- (c) Copies of the current proclamation will be made available at the Department office in Fagatogo.
- (d) The failure of the Department to issue an annual proclamation does not invalidate any existing administrative rules.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0910 Engaging in prohibited activities in restricted fishing areas.

It is unlawful to engage in prohibited fishing activities in restricted areas as defined in the annual proclamation.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0911 Fagatele Bay National Marine Sanctuary.

In conjunction with existing federal regulations, the following activities are prohibited in Fagatele Bay National Marine Sanctuary subzones A and B, the boundaries of which incorporate all lands and waters of Fagatele Bay from the mean high water line seaward to a line extending from Fagatele Point to Steps Point.

- (a) No person shall gather, take, break, cut, damage, destroy or possess any invertebrate, shellfish, coral, bottom formation, or marine plant. Including but not limited to the taking of spiny lobster, slipper lobster, and tridacnid clams.
- (b) No person shall possess or use spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring loaded spearguns, bow and arrows, bang sticks, or any similar taking device.
- (c) No person shall possess or use seines, trammel nets, or any fixed net.
- (d) No vessel shall anchor in living coral or anchor in any manner that causes damage to living coral.
- (e) No vessel shall discharge, or visitor cause to be discharged, in the marine environment any substance that may damage fish habitat. This includes but is not limited to garbage, human waste, and oily bilge.
- (f) There shall be a rebuttable presumption that any items listed in this section found in the possession of a person within the Sanctuary have been used within the sanctuary.
- (g) There shall be a rebuttable presumption that any fish or shellfish found in the possession of a person within the sanctuary was taken within the sanctuary.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0912 Fagatele Bay subzone A.

The following activities are prohibited in Fagatele Bay subzone A, the boundaries of which incorporate all lands and waters of Fagatele Bay from the mean high water line seaward to a line extending from Fagatele Point to Matautuloa Benchmark.

- (a) No person shall possess or use fishing poles, handlines, or trawls.
- (b) Commercial fishing shall be prohibited.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0913 Rose Atoll National Wildlife Refuge (RANWR).

In conjunction with the existing federal regulations, the following activities are prohibited within RANWR, the boundaries of which incorporate all lands within the extreme low water line of the outside perimeter reef except at the entrance channel where the boundary is a line extended between the extreme low waterlines on each side of entrance channel.

- (a) No person shall gather, take, break, cut, damage, destroy or possess any invertebrate, shellfish, coral, bottom formation, or marine plant. This includes but is not limited to the taking of spiny lobster, slipper lobster, and tridacnid clams.
- (b) No person shall take or attempts to take fish.
- (c) No person shall enter RANWR without a special use permit, obtainable at DMWR.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0920 Use of prohibited fishing gears.

It is unlawful to use or possess in a fishing area any gear prohibited by the annual proclamation.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0921 Taking of fish with explosive.

It is unlawful to take or attempt to take fish or shellfish with dynamite or any other explosive.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0922 Use of explosives.

It is unlawful to place or explode dynamite or any explosive, or cause to be placed or explode dynamite or any explosive in the waters of American Samoa for any reason except as may be authorized by the American Samoa Government pursuant to all applicable regulations and permits.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0923 Use of Poisonous substances.

It is unlawful to take or attempt to take fish or shellfish using any substance that has a poisonous or intoxicating effect on fish or shellfish. These prohibited substances include but are not limited to laundry bleach, quinaldine, insecticides, herbicides, and traditional fish poisons derived from plant and animal materials such as Barringtonia (futu) and Derris (Ava niu kini).

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0924 Use of electrical devices.

It is unlawful to take or attempt to take fish or shellfish with any electrical device that operates by shocking with an electrical current.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0925 Use of SCUBA gear.

Subject to the provisions of section 24.0916 and this section, fishing using SCUBA gear is lawful except that:

- (a) It is unlawful to take, attempt to take, or assist in the taking of fish or shellfish (or both) using SCUBA gear by any means other than by hand or by spear.

(b) It is unlawful to take, attempt to take, or assist in the taking of fish or shellfish (or both) using SCUBA gear where the catch or harvest taken exceeds:

- (1) Two fish or two shellfish of any legal size or weight, or one fish and one shellfish of any legal size or weight, per diver per day, or
- (2) The maximum weight of five pounds legal size fish or shellfish in any combination per diver per day, if the quantity of catch or harvest taken is more than two.

(c) It shall be prima facie evidence of a violation of this section for any person when in or on the waters of American Samoa, in any vehicle or vessel, or on the shoreline close to fishing locations, to have in possession SCUBA gear and a catch or harvest which exceeds the limits imposed under subsection (b). In all cases in which such possession or custody is proven, the burden of proof shifts to the person found to be in possession to show that the catch or harvest was taken without using SCUBA gear.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.
Amendments: 2012, renumbering.

24.0926 Use of SCUBA gear at night.

It is unlawful to take, attempt to take, or assist in the taking of fish or shellfish (or both) in any quantity using SCUBA gear after sunset and before sunrise.

- (a) Possession or custody of fish or shellfish (or both) and SCUBA gear by any person when in or on the waters of American Samoa, in vehicle or vessel, or on the shoreline close to fishing locations, during the period commencing one hour after sunset and terminating one hour after sunrise, shall be prima facie evidence that the catch or harvest was taken in violation of this section.
- (b) In all cases where such possession or custody is proven, the burden of proof shifts to the person found to be in possession to show that the catch or harvest was taken after sunrise and before sunset.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.
Amendments: 2012, renumbering.

24.0927 Possession of explosives, poisonous substances, or electrical devices.

It is unlawful for any person when in or on the waters of American Samoa, or on the land close to fishing locations, to possess any explosive, poisonous substances, or electrical devices designed to shock fish. Unless the person proves, by the preponderance of evidence, that he intended to use the item for a purpose other than illegal fishing.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.
Amendments: 2012, renumbering.

24.0928 Hand nets.

The frame opening for hand or scoop nets shall not exceed three feet in diameter.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.
Amendments: 2012, renumbering.

24.0929 Cast or throw nets.

It is unlawful to possess, use or attempt to take fish or shellfish with a cast or throw net with a stretched mesh size less than three quarters of an inch.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.
Amendments: 2012, renumbering.

24.0930 Gillnets.

It is unlawful to:

- (a) Possess, use or attempt to take fish with a gillnet with a stretched mesh size of less than one and one half inches.
- (b) Deploy a gillnet or series of continuous gillnets with a combined length in excess of 700 feet.
- (c) Deploy a gillnet within fifty feet of another gillnet or weir.
- (d) Abandon or discard a gillnet within the waters of American Samoa.
- (e) Deploy a gillnet in any location contrary to existing U.S. Coast Guard or Territorial regulations, or cause a hazard to navigation.

- (f) Deploy a drift gillnet in the waters of American Samoa.
- (g) Deploy a gillnet in water greater than sixty (60) feet deep.
- (h) Gillnets must be checked at least every three hours and cleared of fish and debris.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0931 Seines, surround nets and drag nets.

Seines, surround nets and drag nets must have a stretched mesh size of at least one and one half (1.5) inches. This restriction shall not apply to the construction or use of traditional surround nets (lau) made from materials.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0932 Fish Weirs.

Any person placing or maintaining a fish weir in the waters of American Samoa must first obtain an official permit from the department. The permittee must comply with all requirements of the permit.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0933 Fish Traps.

- (a) Fish and shellfish traps shall not exceed six (6.0) feet in any linear dimension i.e. length, width, height or diameter.
- (b) All fish and shellfish traps must be checked and emptied at least every twenty four (24) hours.
- (c) It is unlawful to deploy a fish or shellfish trap in any location where the trap, line or marker floats may pose a hazard to navigation.
- (d) It is unlawful to abandon or discard a fish or shellfish trap in the waters of American Samoa.
- (e) A permit is required from the department for the use of any fish or shellfish trap(s) used commercially.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0934 Import and sale of illegal fishing gear.

It is unlawful to import, possess, sell or offer for sale any fishing gear that is prohibited from use by these laws.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0935 Illegally taken fish and shellfish.

It is unlawful to possess, receive, transport, buy, sell, or offer for sale any fish or shellfish that was taken in a manner contrary to these laws.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0936 Destruction of coral.

It is unlawful to willfully damage coral during fishing operations.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0937 Destruction of fish habitat.

It is unlawful to willfully damage or destroy fish habitat at any time unless authorized by the American Samoa Government pursuant to all applicable permits and regulations.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0950 Unlawful taking of fish or shellfish.

It is unlawful to take any fish or shellfish in any manner, location, quantity, size or season contrary to the annual proclamation.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0951 Coral.

- (a) It is unlawful to collect any living coral in water less than 60 feet deep.
- (b) No commercial harvest of coral is permitted without a valid coral collection permit from the department. The permittee must comply with all requirements and conditions of the permit.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0952 Live rock.

- (a) It shall be unlawful for any person to knowingly collect, excavate, remove or relocate any quantity of live rock by any means from the waters of American Samoa without a valid permit from the department. Permits may be issued for scientific study or for the mariculture operations in accordance with 24.0939.
- (b) It shall be unlawful to sell, offer for sale, or possess for sale or export any quantity of live rock harvested from the waters of American Samoa, except pursuant to a valid mariculture permit under 24.0939.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0953 Giant Clams (Tridacnidae).

- (a) It is unlawful to take, possess, sell or import any tridacnid clam from the waters of American Samoa that measure less than seven (7.0) inches when measured across the longest part of the shell.
- (b) Tridacnid clams imported, sold or offered for sale must be in whole condition with meat still attached to the shell to facilitate the measuring of these clams.
- (c) Tridacnid clams taken for personal consumption must remain whole condition until they reach the fisherman’s home or the place of consumption so that they may be measured.
- (d) These restrictions shall not apply to clams raised in captivity providing the following:
 - (1) The clam farmer possess a valid aquaculture permit from the department; and
 - (2) The possess can demonstrate that the clam was raised in captivity.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0954 Ornamental Shells.

The commercial harvest of ornamental shells from the waters of American Samoa requires a valid shell

collection permit from the department. The permittee must comply with all requirements and conditions of the permit.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0955 Mangrove Crabs (Scylla serrata).

- (a) It is unlawful to take, possess, sell, offer for sale, import or export eggbearing mangrove crabs.
- (b) It is unlawful to take, possess, sell, offer for sale, import or export any mangrove crab that measures less than six (6.0) inches across the widest portion of the back.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0956 Coconut Crabs (Birgus latro).

- (a) It is unlawful to take, possess, sell, offer for sale, import or export any eggbearing coconut crab.
- (b) It is unlawful to interfere with a coconut crab engaged in the activity of releasing larvae into the waters of American Samoa.
- (c) It is unlawful to take, possess, sell, offer for sale, import or export any coconut crab that measures less than three (3.0) inches across the widest portion of the back.
- (d) These regulations will apply to coconut crabs found throughout the Territory including land areas.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0957 Slipper Lobster (Parribacus sp.).

- (a) It is unlawful to take, possess, import, export, sell or offer for sale eggbearing slipper lobsters.
- (b) It is unlawful to use spears or snagging devices for the collection of slipper lobsters.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0958 Spiny Lobster (Parribacus sp.).

- (a) It is unlawful to take, possess, sell or offer for sale eggbearing spiny lobsters.

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- (b) It is unlawful to take, possess, sell or offer for sale spiny lobsters that measure less than three and one eighth inches in carapace length, defined as the midline measurement taken from the leading edge of the carapace between the horns to the rear edge of the carapace.
- (c) Lobsters taken, imported, sold or offered for sale must be whole to facilitate the measuring of these lobsters.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0959 Sea Turtles.

The following activities relating to the green sea turtle (*Chelonia mydas*), the hawksbill turtle (*Eretmochelys imbricata*), and the leatherback turtle (*Dermochelys coriacea*) are prohibited:

- (1) Import, export, sell or offer for sale any such species or body parts of such species,
- (2) Take any such species in American Samoa, and
- (3) Possess, deliver, carry, transport or ship by any means whatsoever any such species or the body parts of any such species.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0960 Marine Mammals.

It is unlawful to:

- (1) Take a marine mammal in American Samoa,
- (2) Import, export, sell or offer for sale any marine mammal or the body parts of any marine mammal, and
- (3) Possess, deliver, carry, transport or ship by any means whatsoever any marine mammal or the body parts of any marine mammal.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0961 Sharks.

- (a) No person shall:

- (1) Possess, deliver, carry, transport or ship by any means whatsoever any shark species or the body parts of any such species;
- (2) Import, export, sell or offer for sale any such species or body parts of such species; or
- (3) Take or kill any such species in American Samoa.

- (b) If any shark is caught or captured, it shall be immediately released, whether dead or alive. If the shark is captured alive, it shall be released in a manner that affords it the greatest opportunity for survival.

- (c) It is not a defense that the shark was caught or captured inadvertently, as bycatch, or from another fishery.

- (d) For purposes of this section, there shall be a rebuttable presumption that any shark, or part of a shark, found in possession was possessed or transferred in violation of this section.

- (e) Notwithstanding subsection (a), any person who holds a permit issued by the Department of Marine and Wildlife Resources to conduct scientific research shall not be subject to the penalties of this section.

History: DMWR regs., Rule 02-12, eff 1 Nov 12.

24.0962 Humphead Wrasse (*Cheilinus undulatus*).

- (a) This section applies to the Humphead Wrasse (*Cheilinus undulatus*), also known as Napoleon Wrasse, Maori Wrasse, Lalafi, Tagafa, or Malakea.

- (b) No person shall:

- (1) Possess, deliver, carry, transport or ship by any means whatsoever Humphead Wrasse or the body parts of any such species;
- (2) Import, export, sell or offer for sale any such species or body parts of such species; or
- (3) Take or kill any such species in American Samoa.

- (c) If any Humphead Wrasse is caught or captured, it shall be immediately released, whether dead or alive. If the Humphead Wrasse is captured alive, it shall be released in a manner that affords it the greatest opportunity for survival.
- (d) It is not a defense that the Humphead Wrasse was caught or captured inadvertently, as bycatch, or from another fishery.
- (e) For purposes of this section, there shall be a rebuttable presumption that any Humphead Wrasse, or part of a Humphead Wrasse, found in possession was possessed or transferred in violation of this section.
- (f) Notwithstanding subsection (a), any person who holds a permit issued by the Department of Marine and Wildlife Resources to conduct scientific research shall not be subject to the penalties of this section.

History: DMWR regs., Rule 02-12, eff 1 Nov 12.

24.0963 Bumphead parrotfish (*Bolbometopon muricatum*).

- (a) This section applies to the Bumphead parrotfish (*Bolbometopon muricatum*), also known as Green Humphead parrotfish, Uluto'i, Laea-uluto'i, or Galo uluto'i.
- (b) No person shall:
 - (1) Possess, deliver, carry, transport or ship by any means whatsoever Bumphead parrotfish or the body parts of any such species;
 - (2) Import, export, sell or offer for sale any such species or body parts of such species; or
 - (3) Take or kill any such species in American Samoa.
- (c) If any Bumphead parrotfish is caught or captured, it shall be immediately released, whether dead or alive. If the Bumphead parrotfish is captured alive, it shall be released in a manner that affords it the greatest opportunity for survival.

- (d) It is not a defense that the Bumphead parrotfish was caught or captured inadvertently, as bycatch, or from another fishery.
- (e) For purposes of this section, there shall be a rebuttable presumption that any Bumphead parrotfish, or part of a Bumphead parrotfish, found in possession was possessed or transferred in violation of this section.
- (f) Notwithstanding subsection (a), any person who holds a permit issued by the Department of Marine and Wildlife Resources to conduct scientific research shall not be subject to the penalties of this section.

History: DMWR regs., Rule 02-12, eff 1 Nov 12.

24.0964 Giant grouper (*Epinephelus lanceolatus*).

- (a) This section applies to the Giant grouper (*Epinephelus lanceolatus*), also known as Ata'ata-uli or Vaolo.
- (b) No person shall:
 - (1) Possess, deliver, carry, transport or ship by any means whatsoever Giant grouper or the body parts of any such species;
 - (2) Import, export, sell or offer for sale any such species or body parts of such species; or
 - (3) Take or kill any such species in American Samoa.
- (c) If any Giant grouper is caught or captured, it shall be immediately released, whether dead or alive. If the Giant grouper is captured alive, it shall be released in a manner that affords it the greatest opportunity for survival.
- (d) It is not a defense that the Giant grouper was caught or captured inadvertently, as bycatch, or from another fishery.
- (e) For purposes of this section, there shall be a rebuttable presumption that any Giant grouper, or part of a Giant grouper, found in possession was possessed or transferred in violation of this section.

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- (f) Notwithstanding subsection (a), any person who holds a permit issued by the Department of Marine and Wildlife Resources to conduct scientific research shall not be subject to the penalties of this section.

History: DMWR regs., Rule 02-12, eff 1 Nov 12.

24.0980 Permits.

- (a) The following permits are required when applicable:

- (1) Aquarium fish collection permit.
- (2) Fish weir permit.
- (3) Commercial trapping permit.
- (4) Commercial coral harvesting permit.
- (5) Commercial shell harvesting permit.
- (6) Scientific collection permit.
- (7) Importation permit for living aquatic organisms.
- (8) Mariculture permit for culture of living aquatic organisms.
- (9) Importation permit for fresh fish and shellfish products.

- (b) Requests for permits shall be submitted to the director on forms provided by the department.

- (c) The director may disapprove the application, or condition any required permit, if in his opinion the issuance of the permit would be contrary to 24.0304 A.S.C.A. which mandates the department to manage, protect, preserve and perpetuate the marine and wildlife resources in the Territory. Failure to abide by any required condition in a permit shall result in a violation of these rules.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0981 Licenses.

- (a) A commercial fishing license is required for all fishermen engaged in commercial fishing in the waters of American Samoa. Persons who wish to apply for a commercial fishing license must:

- (1) Continuously reside in American Samoa for at least one year,
- (2) Show proof of legal residency or citizenship, and
- (3) Show proof of previous fishing experience.

- (b) License applications shall be submitted to the director on forms supplied by the department.

- (c) A recreational fishing license may be required for fishermen engaging in subsistence or recreational fishing activities. Requirements for the license shall be detailed in the annual proclamation.

- (d) A license shall be issued or renewed upon approval of the application form and payment of the required Act.

- (e) The director or his designees may suspend or revoke any license for violation of any regulation under this chapter pursuant to the Administrative Procedures Act.

- (f) The director may disapprove the application of any required license if in his opinion the issuance of the license would be contrary to 24.0304(1) A.S.C.A. which mandates the department to manage, protect, preserve and perpetuate the marine and wildlife resources in the Territory.

- (g) Fees for licenses shall be set in the annual proclamation.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0982 Scientific Collection Permit.

Any person with a bona fide scientific or educational purpose may apply in writing to the director for a scientific collection permit that may allow the applicant to collect aquatic organisms using gear, in certain areas, or at certain times, otherwise prohibited by these regulations.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0983 Imported Fish Products.

All persons importing fresh fish and shellfish products of the same species found in American

Samoan waters must first obtain a permit from the Department and shall comply with all applicable laws in this document. Failure to demonstrate compliance with these laws shall result in denial of the applicable permit(s) and forfeiture of the unlawful product in accordance with 24.0948.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0984 Importation of Living Aquatic Organisms.

- (a) Any person wishing to import living aquatic organisms to the Territory must first obtain a permit from the department after consultation and approval by the director.
- (b) Requests for permits shall be submitted to the director on forms provided by the department.
- (c) The director may disapprove the application, or condition any require permit, if in his opinion the issuance of the permit would be contrary to 24.0304 A.S.C.A. which mandates the department to manage, protect, preserve and perpetuate the marine and wildlife resources in the Territory.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0985 Fish Aggregation Devices (FADs).

- (a) Any person wishing to deploy a FAD in the waters of American Samoa must first obtain a permit to do so from the U.S. Coast Guard. Preliminary planning shall be carried out in cooperation with the department and the U.S. Coast Guard.
- (b) It is unlawful to moor any vessel, line, float, net, etc. to any department FAD, unless approved by the director.
- (c) It is unlawful to obstruct or intentionally hinder another vessel from fishing in the area of the department FAD.
- (d) It is unlawful to tamper with any portion of the department FAD.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0986 Recreational Mooring Buoys.

- (a) It is unlawful to fish or conduct fish or shellfish harvesting activities while moored to a recreational mooring buoy.
- (b) It is unlawful to tamper with, vandalize or remove any recreational mooring buoy.
- (c) Recreation mooring buoys shall be clearly marked, “No Fishing.”

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0987 Public Access Boat Ramps.

- (a) It is unlawful to intentionally hinder any vehicle or vessel from using a department constructed boat ramp.
- (b) It is unlawful to leave any vehicle, vessel or trailer on a department constructed boat ramp for any period exceeding one hour.
- (c) It is unlawful to tie any vessel to a department constructed boat ramp or moor any vessel in a manner that prevents access to the boat ramp.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0990 Enforcement.

- (a) These laws are fully enforceable by ASG Department of Public Safety Officers and other authorized persons, although the primary enforcement agents will be deputized DMWR staff.
- (b) Pursuant to 24.0310(a) A.S.C.A., the director and designated staff shall have full authority to issue citations, collect fines, impound vessels, vehicles and equipment, and make arrests for violations of these laws.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

24.0991 Penalties.

- (a) Pursuant to 24.0312(a) A.S.C.A., any person who violates any provision of these laws shall be guilty of a class B misdemeanor punishable by a

fine not to exceed five hundred dollars or by a prison term in excess of fifteen days not to exceed six months, or both.

- (b) Pursuant to 24.0312(b) A.S.C.A., any business entity found in violation of these laws shall be fined not less than one-thousand dollars per violation.
- (c) Pursuant to 24.0312(b) A.S.C.A., any property taken or possessed in violation of these laws may be subject to forfeiture to the government pursuant to a civil proceeding in the High Court of American Samoa.

History: DMWR regs., eff 3 Aug 95; Rule 02-12, eff 1 Nov 12.

Amendments: 2012, renumbering.

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TITLE 24 – CHAPTER 10 – COMMUNITY-BASED FISHERIES MANAGEMENT PROGRAM

Sections

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24.1001 Authority.

Pursuant to the authority granted to the Department of Marine and Wildlife Resources under A.S.C.A. § 24.0905, the following rules and regulations are set forth to govern and provide authority for the Community-based Fisheries Management Program.

History: Rule 1-08, eff 2008.

24.1002 Purpose.

The American Samoa Islands and its surrounding waters contain historical, cultural, and natural resources that must be protected, managed, controlled and preserved for the benefit of all people of the Territory and future generations. The protection of these traditionally valuable resources will enhance and increase fish abundance and size for future catch.

- (a) To promote the protection and preservation of the American Samoa’s Marine environment;
- (b) To promote the management, conservation and sustainable development of American Samoa’s Coral Reefs and their supporting ecosystems;
- (c) To enhance sustainable fisheries in American Samoa;
- (d) To empower, allow and assist local Villages in all aspects of the Village Marine Protected Area management including, but not limited to designation, protection, monitoring and enforcement of the Village Marine Protected Areas; and

- (e) The institution of management programs to ensure that the Territory and its surrounding waters are safe habitats for Fish, shellfish and other marine life to exist and propagate for the continued use and enjoyment for the people of American Samoa, its future generations and visitors.

History: Rule 1-08, eff 2008.

24.1003 Definitions.

The following definitions shall apply to the regulations of the Community-based Fisheries Management Program. Any definition referring to the male gender also includes the female gender.

- (1) “Barter” means the exchange or trade of Fish or Shellfish, or any Fish or Shellfish parts:
 - (a) Taken for any use;
 - (b) For other Fish, Shellfish or game or their parts; or
 - (c) For other food or for non-edible items other than money if the exchange or trade is of a noncommercial nature.
- (2) “Bleaching Agent” means any chemical-based product, solution, or liquid that may damage marine resources.
- (3) “Closed Area(s)” means an area designated by the Village Monitoring and Enforcement Committee, and the Department, where it is illegal or prohibited to take Fish or Shellfish or any marine organism;
- (4) “Closed Season” means the time during which Fish or Shellfish and any marine organism may not be Taken;
- (5) “Commercial Fishing” means any Fishing activity in which part or all of the catch is sold or marketed or for which the fisherman receives income as a result of the Fishing activity, such as payment for Fishing charter, a salary for Fishing, or cash for their portion of the catch and includes the Taking, Fishing for, or possession of Fish, Shellfish, or other Fishery resources with the intent of disposing of them for profit, or by sale, Barter, trade or in commercial channels.
- (6) “Coral” means the hard and soft corals. Hard corals are corals with hard or stony skeleton of marine creatures formed by polyps that live and grow in the Waters of American Samoa and also includes any Live Rock composed of dead coral skeleton or any living aquatic organism of the phylum Cnidaria that are capable of secreting hard skeletal parts or can incorporate stony secretions within or around their tissues e.g. hermatypiccorals, black coral, precious corals, blue coral, organ pipe corals, fire corals, lace corals or other similar corals. Soft corals are members of phylum Cnidaria, Class Anthozoa, order Octocorallia that have soft fleshy tissues, attach to the sea bottom and may have a flexible skeleton. They include Alcyonaca soft corals and gorgonians.
- (7) “Cultural uses” means the Taking of Fish or Shellfish needed or used by a person where the Fish or Shellfish is normally or regularly used in cultural activities, ceremonies or traditions.
- (8) “Cyanide” means compounds that include cyanide salts, such as sodium cyanide or potassium cyanide which can be solids or in solutions, and the gas hydrogen cyanide (HCN), also known as hydrocyanic acid gases, also known as hydrocyanic acid gas.
- (9) “Cyanide Fishing” means a Fishing method using Cyanide compounds to Take Fish or Shellfish.
- (10) “Day” means a twenty-four (24) hour period beginning at one minute after midnight (12:01 a.m.) and ending at midnight, 24hours later.
- (11) “Department” means the Department of Marine and Wildlife Resources (DMWR).
- (12) “Director” means the director of DMWR.
- (13) “Domicile” means the true and permanent home of a Person from which that Person has no present intention or plan of moving away from and to which that Person intends or plans to return to whenever that Person is away; domicile may be proved by presenting evidence acceptable to the Department or the Village Monitoring and Enforcement Committee.

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- (14) “Fish” means any aquatic species of mammal, finfish, invertebrate, seaweeds, limu, or amphibian, in any state of its life cycle, found in or introduced into the Waters of American Samoa, and includes any part of such aquatic finfish, invertebrate, or amphibian, and includes but is not limited to octopi, urchins, sea cucumbers, snails, sea slugs, lobsters, crabs, shrimp, clams, sharks, rays, anemones, and those fish species of the classes Osteichthyes, Chondrichthyes, and Macroalgae occurring in the Waters of American Samoa. The term “Fish” includes all stages of development and the bodily parts of fish species.
- (15) “Fishery” means a specific area of water or Reef in which a specific Marine Resource is Taken with a specific type of Fishing Gear; additionally, the Department may designate a Fishery to include more than one specific type of Fishing Gear or Marine Resource;
- (16) “Habitat” means any natural or man-made material so configured as to create an environment that attracts, retains or is significantly used by populations of Fish, Shellfish and/or any living organism.
- (17) “Fishing” means to Take or attempt to Take Fish or Shellfish or any marine organism by any means including, but not limited to, the following:
- (a) The use of Fishing Gear such as hook and line, spears, nets, traps, weirs, and any other device or method used to Take or attempt to Take Fish or Shellfish or any marine and aquatic organism;
 - (b) Searching for catching, Taking or harvesting Fish or Shellfish or any marine and aquatic organism;
 - (c) The attempted searching for, catching, Taking, or harvesting of Fish or Shellfish or any marine and aquatic organism;
 - (d) Engaging in any other activity which can reasonably be expected to result in locating, catching, Taking or harvesting of Fish or Shellfish or any marine and aquatic organism;
 - (e) Placing and/or deploying, searching and recovery of any associated equipment such as radio beacons, buoy markers, Fish Aggregation Devices (FAD) except Department FAD’s; or
 - (f) Any operation in the Waters of American Samoa in support of, or in preparation of any activity described in this definition.
- (18) “Fishing Gear” means any equipment, implement or other thing or item that can be used in the act of Fishing or Taking of Fish, including any fishing net, fishing line, float trap, hook, winch, spear, or any other device used to Take or attempt to Take Fish or Shellfish or any marine and aquatic organism.
- (19) “Fish Trap” means any portable or removable baited or unbaited Fish catching apparatus consisting of an enclosure with entrances designed to admit and retain Fish or Shellfish.
- (20) “Fish Weir” means any baited or unbaited Fish or Shellfish or any marine or aquatic organism catching apparatus consisting of a pocket, trap, and/or fixed barrier that is placed in a fixed position. This term includes any material or item used in the construction of the apparatus including any net, pole, rope, wire, mesh, branch, leaves, or other similar materials. For the purposes of these regulations, there are two types of Fish Weirs:
- (a) “Main Weir” means the central collection pocket or trap of a Fish Weir including its leader (main entrance) and any wings (side entrances);
 - (b) “Auxiliary Weir” means any secondary pocket or trap and its leader and wings that are attached to a Main Weir.
- (21) “Gleaning” means the Taking of Fish or Shellfish or any marine and aquatic organism using the hand and/or with a handheld knife or other handheld instrument.
- (22) “Live Rock” means any Coral, basalt rock, or other natural structure with any living organisms growing in or on the Coral, basalt rock, or structure.

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- (23) “Legal Entity” or “Legally Recognized Entity” means any corporation, partnership, joint venture, affiliation, association, or any other entity recognized by the laws of American Samoa.
- (24) “Length of Fish” means the length from the tip of the snout of the Fish to the tip of the tail of the Fish (total length).
- (25) “Limit” means the maximum legal Take per Person per day in the area in which the Person is Fishing even though part or all of the Fish are immediately preserved; a Fish when landed and killed becomes a part of the Limit of the Person originally hooking or catching it and cannot be transferred or given to another Person for the purposes of determining a Person’s Limit.
- (26) “Village Marine Protected Area” (VMPPA) means any shore, shoreline, Reef or other designated marine area, that is established to serve the purpose(s) of these regulations.
- (27) “Marine Resource” means any Fish, Shellfish, marine animal, Coral, Live Rock or other living creature or marine life found in or on the salt Waters of American Samoa or found in or on a Reef.
- (28) “Mean High Water Mark” means the average level of the ocean’s high tide for a particular area of shoreline or Reef.
- (29) “Mean Low Water Mark” means the average level of the ocean’s low tide for a particular area of shoreline or Reef.
- (30) “Night Fishing” means the Fishing or Taking of Fish or Shellfish in the time period between one (1) hour after sunset until one (1) hour before sunrise.
- (31) “Open Season” means the time during which Fish or Shellfish may lawfully be Taken; each period of time prescribed as an open season shall be interpreted to begin at 12:01 a.m. on the first day of the stated Time Period and end at midnight of the last day of the stated Time Period unless otherwise stated in a designation of an Open Season.
- (32) “Participating Village” means a village that has agreed to participate in the Community-based Fisheries Management Program under Section 24.1004.
- (33) “Person” means an individual, corporation, company, association, partnership or any other Legally Recognized Entity.
- (34) “Persons” means more than one Person.
- (35) “Reef” means the area from the shore line at Mean High Water Mark to a point one hundred (100) yards past the point where breakers form during the lowest low tide (i.e., during spring tide) which shall contain the entire area, length, growth, and structure of any Coral including all Live Rock(s), and atolls located on or in the Reef.
- (36) “Resident” means:
- (a) A person who for the 12 consecutive months immediately preceding the time when the claim of residence is made has maintained the Person’s Domicile in American Samoa and who is neither claiming residency in another state, territory, or country, nor obtaining benefits under a claim of residency in another state, territory, or country;
 - (b) A native Samoan who resides in a village;
 - (c) A Legal Entity that has its main office or headquarters in American Samoa; a natural person who does not otherwise qualify as a resident under this paragraph may not qualify as a resident by virtue of an interest in a partnership, association, joint stock company, trust, or corporation;
 - (d) A member of the military service, or United States Coast Guard, who has been stationed in American Samoa for the 12 consecutive months immediately preceding the time when the claim of residence is made;
 - (e) A person who is the dependent of a resident member of the military service, or the United States Coast Guard, and who has lived in American Samoa for the 12 consecutive months immediately preceding

the time when the claim of residence is made; or

- (f) An alien who for the 12 consecutive months immediately preceding the time when the claim of residence is made has maintained the person’s Domicile in American Samoa and who is neither claiming residency in another state, territory, or country, nor obtaining benefits under a claim of residency in another state, territory, or country.
- (37) “Sandmining” means the act of or actual removal of sand from the coastline or in the village marine protected areaby a Person by any means or method and for any commercial use or personal use, including but not limited to removal by shovel, vehicle, ricebags, barrels, bare hands, buckets, or any mechanism or manner in which sand is removed from a Village Marine Protected Area.
- (38) “Season” means a stated period of time that occurs in yearly cycles.
- (39) “Shellfish” means any aquatic animal with a shell and also includes all species of marine and freshwater invertebrates occurring in the Waters of American Samoa. The term “Shellfish” includes all stages of development and the bodily parts of Shellfish species.
- (40) “Shellfish Trap” means any removable or portable, baited or unbaited Shellfish catching apparatus consisting of an enclosure with entrances designed to admit and retain Shellfish.
- (41) “Subsistence Fishing” means any legal Fishing activity where the catch is not sold or marketed but is shared within the family or Village for the purpose of home consumption and includes Cultural Uses.
- (42) “Subsistence Uses” means the noncommercial, customary and traditional uses of wild, renewable Marine Resources by a Resident, whose Domicile is American Samoa, such use being for the direct personal or family consumption as food or for the customary trade, Barter, or sharing for personal or family consumption; in this paragraph, “family” means persons related by blood, marriage, adoption, Samoan custom or culture, or a person living in the Resident’s household on a permanent basis.
- (43) “Take”; “Taking”; “Takes” means to harass, harm, pursue, hung, shoot, wound, kill, capture, trap or collect, or attempt to engage in any such conduct.
- (44) “Taken” means the removal, captured, killed or transferred of Fish/Shellfish or any other marine and aquatic organism.
- (45) “Time Period” means any stated measurement or amount of time, including but not limited to, hours, days, weeks, or months.
- (46) “Toxicant” means any material or chemical put, placed or introduction into the salt Waters of American Samoa by direct or indirect means that will kill, stun, or intoxicate Fish or Shellfish, or drive Fish or Shellfish from their normal or natural location.
- (47) “Underwater Breathing Device” means any mechanical, fabricated, or man-made device or apparatus, including SCUBA equipment, Hookah equipment, used by a Person to allow that Person to breathe while submerged or while partly submerged. An Underwater Breathing Device does not include a snorkel that is less than twenty (20) inches in length.
- (48) “Village” means a common association or grouping of houses, families, or people based upon traditional, recognized boundaries
- (49) “Village Monitoring and Enforcement Committee” means the individual or group of individuals from a Village who have been selected, designated and trained to monitor their Village’s Marine Protected Area through Village by-laws.
- (50) “Village Policeman” means any elected or chosen policeman of a Village.
- (51) “Village Pulenu’u” means the elected or chosen mayor of a Village.
- (52) “Wastewater” means water or liquid that is discarded, discharged or released by a Person from any residence, vessel, guesthouse, house,

or business, including but not limited to, sewage or the discharge from a washing machine.

History: Rule 1-08, eff 2008.

24.1004 Village Participation in the Community-based Fisheries Management Program.

To participate in the Community-based Fisheries Management Program a Village must do the following:

- (a) Notify the Department of the Village’s intent to participate;
- (b) Meet with the proper representatives from the Department;
- (c) Develop and implement Village by-laws for the conservation and management of the Village Marine Protected Area using the management options provided by this Community-based Fisheries Management Program or other management options recommended by the Department;
- (d) Develop a Village Fisheries Management Plan
- (e) Designate a Village Marine Protected Area that is properly within the boundaries of the Village;
- (f) Select members for a Village Monitoring and Enforcement Committee;
- (g) Mark the Village Marine Protected Area;
- (h) Sign a cooperative agreement with DMWR to work together on the program;
- (i) Receive training from the Department for the individuals of the Village Monitoring and Enforcement Committee who will monitor the Village’s Marine Protected Area;
- (j) Provide Notice of the designation of the Village Marine Protected Area and Village by-laws to the public of American Samoa as required by the Administrative Procedures Act and these regulations; and
- (k) Notify the Department of the Village’s intent to open, re-open, close or re-close any Village Marine Protected Area.

History: Rule 1-08, eff 2008.

24.1005 Designation and Marking of a Village Marine Protected Area.

- (a) A participating Village must designate the Village Marine Protected Area that will be governed by the management methods of these regulations.
- (b) A participating Village must provide the Department with a description of the area designated as the Village Marine Protected Area.
- (c) A designated Village Marine Protected Area’s boundaries must be marked in a manner reasonably obvious to inform the public that access to the area has been restricted. Marking can be accomplished by any obvious means, including, but not limited to:
 - (i) Signs;
 - (ii) Posted Notices;
 - (iii) Published Notices;
 - (iv) Anchored or secured Floats that indicate the area is a Village Marine Protected Area.
- (d) Limitations on Designating a Village Marine Protected Area:
 - (i) A Village may not designate as its Village Marine Protected Area a section, portion, or part of a Reef or reef flat that belongs to or has been traditionally controlled by another Village.
 - (ii) A Village may only designate as its Village Marine Protected Area a section, portion, part or all of a Reef that extends no more than one hundred (100) yards seaward beyond the end of the Reef at the Mean Low Water Mark.
- (e) In areas where there is an overlap of authority or control over a Reef, or where the Village boundaries of a Reef are disputed, such dispute being supported by law or fact, the Village Monitoring and Enforcement Committees for each Village may do any of the following:
 - (i) Agree on the Management of the disputed area and work together to manage the portion of disputed Reef;

- (ii) Establish an agreed upon boundary only for the purposes of marine conservation and management. Any such agreed upon boundary would not be an admission of the actual boundary but would only exist for the purposes of the Community-based Fishery Management Program;
- (iii) Allow the Department to manage the disputed area; or
- (iv) If no agreement can be reached between the disputing Villages, then there shall be no authority under these regulations for any to manage the disputed area.

History: Rule 1-08, eff 2008.

24.1006 Village By-laws.

- (a) Each participating Village shall, after consultation with the Department, implement the set of Village by-laws that set forth the conservation and management measures that will control the Village’s Marine Protected Area.
- (b) The set of Village by-laws shall be adopted as required in A.S.C.A. § 4.1004.
- (c) The Department shall keep on file, and make available to the public upon proper written request, a copy of the Village’s bylaws. Any Person may request a copy of any Village by-laws.
- (d) Each participating Village’s Pulenu’u shall retain a copy of the Village by-laws.

History: Rule 1-08, eff 2008.

24.1007 Removal or Tampering with markers of a Village Marine Protected Area.

- (a) It is a violation of these regulations for any unauthorized Person to remove, move, change, modify, destroy, hide, or submerge, or attempt to, or to cause such actions to any Village Marine Protected Area marker.
- (b) It shall be a violation of these regulations for any Person who is authorized by one Village to set out the markers of Village’s Marine Protected Area to remove, move, change, modify, destroy, hide, or submerge, or attempt to, or cause such actions to any marker of any other Village’s

Marine Protected Area unless so authorized by that Village’s Monitoring and Enforcement Committee.

History: Rule 1-08, eff 2008.

24.1008 Fishing or Taking Fish in a Village Marine Protected Area.

- (a) The following methods of Fishing or Taking Fish or Shellfish shall be the only Approved Fishing Methods for Fishing or Taking Fish or Shellfish in any Village Marine Protected Area.
 - (i.) Fishing with a rod and reel;
 - (ii.) Fishing with a bamboo pole;
 - (iii.) Fishing with a hand line;
 - (iv.) Fishing by Gleaning;
 - (v.) Fishing with a hand thrown pole spear;
 - (vi.) Fishing with a throw net;
 - (vii.) Fishing with a Fish or Shellfish Trap;
 - (viii.) Traditional Samoan fishing methods such as the use of Lau and the enu and spear;
 - (ix.) Fishing using spear gun(s)
- (b) Any other method of Fishing or Taking Fish, other than the methods listed in subsection (a) of this section, shall be an illegal Fishing method and shall violate the provisions of the Community-based Fisheries Management Program.
- (c) Any Village may further restrict Fishing or the Taking of Fish or Shellfish on or in its designated Village Marine Protected Area by:
 - (i.) Restricting all Approved Fishing Methods for a certain period of time;
 - (ii.) Limiting the type of Approved Fishing Methods allowed to be used in a Village Marine Protected Area;
 - (iii.) Banning all forms of Fishing in the Village Marine Protected Area;
 - (iv.) Restricting the area or areas within a Village Marine Protected Area where Fishing is allowed;

- (v.) Restricting Fishing by declaring Open Seasons when Fishing is allowed;
 - (vi.) Restricting the total number of all Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);
 - (vii.) Restricting the total number of a species of Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);
 - (viii.) Restricting a Time Period during a Day when Fishing is allowed;
 - (ix.) Restricting the type or species of Fish that may be Taken;
 - (x.) Restricting the size of Fish that may be Taken by instituting size limitations requiring Taken Fish to exceed an overall Length of Fish;
 - (xi.) Banning all Night Fishing;
 - (xii.) Allowing only Subsistence Fishing or the Taking of Fish or Shellfish for Subsistence Uses or Cultural Uses;
 - (xiii.) Instituting harvest limits that limit the total amount of Fish or Shellfish or a type of Fish or Shellfish that can be Taken from the Village Marine Protected Area;
 - (xiv.) Banning all Commercial Fishing;
 - (xv.) Banning the Taking of Fish or Shellfish with the aid or use of lights; and/or,
 - (xvi.) Restricting or banning other activities in a Village Marine Protected Area including, but not limited to, swimming, wading, and surfing.
- (a) Any Fishing method not listed as an Approved Fishing Method.
 - (b) Any Fishing, whether commercial, non-commercial, sport, subsistence, or for Cultural Uses, by the use of explosives, poisons, a Bleaching Agent, other noxious or Toxicant substances, Cyanide Fishing, electric shocking devices, SCUBA equipment or hookah equipment when Taking or Fishing for Fish or Shellfish or harvesting other marine life, including but not limited to the use of ava niu kini for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught.
 - (c) Any fisherman to carry or have in a fisherman's possession or control any explosive, poison, or other noxious or Toxicant substance in circumstances indicating an intention to use such explosive, poison, or other noxious or Toxicant substance for any of the purposes referred to in this paragraph. Any explosive, poison or other noxious or Toxicant substance found on board any Fishing Vessel, or in the possession of any Person on or in the Waters of American Samoa, unless the contrary can be proven, shall be presumed to be intended for the purpose referred to in this subsection.
 - (d) The Taking or attempt to Take Fish or Shellfish with any electrical device that operates by shocking with an electrical current for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught. Any electrical shocking device found on board any Fishing Vessel, or found in the possession of any Person on or in the Waters of American Samoa, shall be presumed, unless the contrary can be proven, to be intended for the purpose referred to in this subsection.
 - (e) Taking Fish by Fishing with the aid of any Self-Contained Underwater Breathing Apparatus (SCUBA) gear or any other Underwater Breathing Device except where exempted by the village and DMWR.

History: Rule 1-08, eff 2008.

24.1009 Prohibited Acts.

The following Fishing methods shall be Illegal Fishing Methods and are prohibited in any and all designated Village Marine Protected Areas and no Village, whether participating or not participating in the Community-based Fisheries Management Program, may allow or permit any of the following:

- (f) Using any light to attract Fish for the purpose of Fishing or Taking Fish from the period one hour before sunset until one hour after sunrise, whether the light is floating, moored, or handheld.
- (g) Taking Fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow.
- (h) Any Sandmining in a Village’s Marine Protected Area without a Sandmining permit from the Department.
- (i) The intentional dumping or discarding of any trash or garbage on the shoreline, beach or Reef of a Village Marine Protected Area.
- (j) The collection of any Fish or Shellfish or any marine organism for research unless a collection permit issued by the Department.

History: Rule 1-08, eff 2008.

24.1010 Damage to the Village Marine Protected Area.

It is a violation of the provisions of this Community-based Fisheries Management Program for any Person to deliberately or intentionally cause, or allow to be caused, any damage or destruction to the marine environment of any Village Marine Protected Area. This includes, but is not limited to:

- (a) The dumping of trash or garbage into a Village Marine Protected Area, including the shoreline, beach or reef of a Village Marine Protected Area.
- (b) The discharging of pollutants or Wastewater into a Village Marine Protected Area;
- (c) The discharging of pollutants into any stream, creek, ava, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will enter the Village Marine Protected Area.
- (d) The act of Sandmining.

History: Rule 1-08, eff 2008.

24.1011 Protection of other Marine Life in a Village Marine Protected Area.

- (a) No living Coral or Live Rock may be Taken or removed from a Village Marine Protected Area.

- (b) No Marine Mammals or any part of a Marine Mammal may be Taken or removed from a Village Marine Protected Area.

History: Rule 1-08, eff 2008.

24.1012 Endangered Species.

No Village or Village and Enforcement Monitoring Committee may allow, permit, or authorize any Person to Take or attempt to Take any species of sea turtles and other endangered species listed as an endangered species in Title 50 of the Code of Federal Regulations sections 17.11 and 17.12, as amended or modified from time to time, or any species protected by any United States federal law.

History: Rule 1-08, eff 2008.

24.1013 Enforcement of Violations.

The following methods and procedures are authorized and available to enforce the provisions of this Community-based Fisheries Management Program.

- (a) The Director may deputize and otherwise authorize a Village’s Pulenu’u and one Village policeman to issue citations under the Community-based Fisheries Management Program.
 - (1) All persons to be deputized or authorized under this subsection shall receive full and proper training from the Department in the issuance of citations.
 - (2) The Village shall not have any power or authority to enforce any citation issued. Only the Department may enforce and pursue any citations issued for violations of the Community-based Fisheries Management Program or the Village by-laws.
 - (3) The original and all copies citations issued by the individual(s) authorized in this subsection (a) shall be submitted to the Department the next business day after issuance of the citation.
- (b) The Department may issue citations and enforce any provision of the Community-based Fisheries Management Program and any provision of the Village by-laws.

- (c) As a method of enforcement, the Department, in its sole discretion, may:
 - (i) Issue and enforce a citation;
 - (ii) Issue a warning; or
 - (iii) Seize any or all equipment(s) relevant to the violation
 - (iv) Take no action.

History: Rule 1-08, eff 2008.

24.1014 Form of Community-based Fisheries Management Program Citation.

The form of the citation shall be approved by the Department and copies of the form shall be stocked, ordered, provided and paid for by the Department.

History: Rule 1-08, eff 2008.

24.1015 Service of a Community-based Fisheries Management Program Citation.

The citation must be served by personal deliver of a copy of the citation to the defendant.

History: Rule 1-08, eff 2008.

24.1016 Training of individuals to enforce Village By-laws.

- (a) The Department shall provide all training of the individual(s) from a Village that is to monitor the Village’s Marine Protected Area.
- (b) The number of individuals trained by the Department for each Village shall be only the number of persons reasonably needed to monitor the Village’s Marine Protected Area.

History: Rule 1-08, eff 2008.

24.1017 Penalties.

The following penalties may be assessed by the Department against a Person who is issued a citation by the Department for violation of the Village by-laws or a violation of these regulations:

- (a) A warning may be issued, at the discretion of the person authorized to issue citations for violations of the Village by-laws or these regulations.
- (b) Require a Person to perform up to thirty (30) hours of community service and participate in

Coral Reef Classes given at the Department. Community service includes, but is not limited to, assisting Department staff and participating Villages with shoreline, beach and Marine Protected Area cleanup, installing signs for Village Marine Protected Areas and participating in Village monitoring activities.

- (c) Pursuant to A.S.C.A. § 24.312(a) the Department may fine any Person who violates any provision of Department regulations and the Person fined shall be guilty of a class B misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00) or by a prison term in excess of fifteen (15) days but not to exceed six (6) months, or by both.

SECTION	OFFENSE	1 ST Violation	2 nd Violation	3 rd Violation
24.1007	(a) – (b)	100.00	200.00	300.00
24.1008	(c): i-v and xi	100.00	200.00	300.00
24.1008	(c): vi-xvi except xi	50.00	100.00	200.00
24.1009	(g) Taking fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow	50.00	100.00	200.00
	(h) Sand mining in Village Marine Protected Area without DMWR permit	Individual: 100.00 Corporation: 200.00	Individual: 200.00 Corporation: 300.00	Individual: 300.00 Corporation: 500.00
	(i) Dumping/discarding trash on the shoreline beach or Reef of a Village	100.00	200.00	300.00

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	Marine Protected Area			
	(j) The collection of any Fish or Shellfish or any marine organism for research unless a collection permit issued by the Department	Individual: 50.00 Corporation: 100.00	Individual: 100.00 Corporation: 200.00	Individual: 200.00 Corporation: 300.00
24.1010	(a) The dumping of trash or garbage into a VMPA, including shoreline, beach or reef of a VMPA	100.00	200.00	300.00
	(b) The discharging of pollutants or Wastewater into a VMPA	100.00	200.00	300.00
	(c) The discharging of pollutants into any stream, creek, avva, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will	100.00	200.00	300.00

	enter the VMPA			
	(d) The act of Sand mining	100.00	200.00	300.00
24.1011	(a) No living Coral or Live Rock may be Taken or removed from a VMPA	50.00	100.00	200.00
	(b) No Marine Mammals or any part of a Marine Mammal may be taken or removed from a VMPA	25.00	50.00	100.00

History: Rule 1-08, eff 2008.

24.1018 Confiscation, seizure, and forfeiture of property.

- (a) Property used in connection with a violation resulting in a conviction for violating any of the prohibited acts set forth in ASAC §24.1008 is subject to seizure and forfeiture.
- (b) Upon a conviction of a person in whose possession the property was found, the court having jurisdiction over the criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, may make a finding that the property was used in connection with a violation and may order such property forfeited to DMWR.
- (c) Notification of property seized under this section must be sent by certified mail to a registered owner within 14 days after seizure. If DMWR, after diligent inquiry, cannot ascertain the registered owner, the notice requirement is satisfied.

(d) DESTRUCTION OR DISPOSITION OF PROPERTY.—All property forfeited under this section may be destroyed, used by DMWR, disposed of by gift to charitable or state institutions, or sold, with the proceeds derived from the sale deposited into the Fund to be used for law enforcement purposes.

History: Rule 1-08, eff 2008.

24.1019 Authority.

Pursuant to the authority granted to the Department of Marine and Wildlife Resources under ASCA § 24.0304 and pursuant to the Authority under the Community-based Fisheries Management Program, the following Village by-laws govern and provide the manner for each Village’s participation in the Community-based Fisheries Management Program.

History: Rule 1-08, eff 2008.

24.1020 Purpose.

The by-laws provide each Village with a set of guidelines and rules to implement and utilize in the Village’s participation in the Community-based Fisheries Management Program.

History: Rule 1-08, eff 2008.

24.1021 Definitions.

The definitions as set forth in the Community-based Fisheries Management Program shall apply to the terms used in these by-laws.

History: Rule 1-08, eff 2008.

24.1022 Marking of a Village Marine Protected Area.

- (a) A Village’s designated Village Marine Protected Area’s boundaries must be marked in a manner reasonably obvious to inform the public that access to the area has been restricted.
- (b) A Village’s Marine Protected Area shall be marked by the use of one or more of the following:
 - (i) Signs;
 - (ii) Posted Notices;
 - (iii) Published Notices;

(iv) Anchored or secured Floats that indicate the area is a Village Marine Protected Area.

(c) Any sign or notice marking a Village’s Marine Protected Area shall be posted in both Samoan and English.

History: Rule 1-08, eff 2008.

24.1023 Fishing or Taking Fish in a Village Marine Protected Area.

- (a) The following methods of Fishing or Taking Fish or Shellfish shall be the only Approved Fishing Methods for Fishing or Taking Fish or Shellfish in any Village’s Marine Protected Area.
 - (i.) Fishing with a rod and reel;
 - (ii.) Fishing with a bamboo pole;
 - (iii.) Fishing with a hand line;
 - (iv.) Fishing by Gleaning;
 - (v.) Fishing with a hand thrown pole spear;
 - (vi.) Fishing with a throw net;
 - (vii.) Fishing with a Fish or Shellfish Trap;
 - (viii.) Traditional Samoan fishing methods such as the use of Lau and the enu and spear; and
 - (ix.) Fishing using spear gun(s).
- (b) Any other method of Fishing or Taking Fish, other than the methods listed in subsection (a) of this section, shall be an illegal Fishing method and shall violate the provisions of the Community-based Fisheries Management Program.
- (c) Any Village may further restrict Fishing or the Taking of Fish or Shellfish on or in its designated Village Marine Protected Area by:
 - (i.) Restricting all Approved Fishing Methods for a certain period of time;
 - (ii.) Limiting the type of Approved Fishing Methods allowed to be used in a Village Marine Protected Area;
 - (iii.) Banning all forms of Fishing in the Village Marine Protected Area;

- (iv.) Restricting the area or areas within a Village Marine Protected Area where Fishing is allowed;
- (v.) Restricting Fishing by declaring Open Seasons when Fishing is allowed;
- (vi.) Restricting the total number of all Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);
- (vii.) Restricting the total number of a species of Fish and/or Shellfish that a Person is allowed to Take during one (1) Day or other specified Time Period(s);
- (viii.) Restricting a Time Period during a Day when Fishing is allowed;
- (ix.) Restricting the type or species of Fish that may be Taken;
- (x.) Restricting the size of Fish that may be Taken by instituting size limitations requiring Taken Fish to exceed an overall Length of Fish;
- (xi.) Banning all Night Fishing;
- (xii.) Allowing only Subsistence Fishing or the Taking of Fish or Shellfish for Subsistence Uses or Cultural Uses;
- (xiii.) Instituting harvest limits that limit the total amount of Fish or Shellfish or a type of Fish or Shellfish that can be Taken from the Village Marine Protected Area;
- (xiv.) Banning all Commercial Fishing;
- (xv.) Banning the Taking of Fish or Shellfish with the aid or use of lights; and/or,
- (xvi.) Restricting or banning other activities in a Village Marine Protected Area including, but not limited to, swimming, wading, and surfing.

History: Rule 1-08, eff 2008.

24.1024 Prohibited Acts.

The following Fishing methods shall be Illegal Fishing Methods and are prohibited in any and all designated Village Marine Protected Areas and no Village, whether participating or not participating in the Community-based Fisheries Management Program, may allow or permit any of the following:

- (a) Any Fishing method not listed as an Approved Fishing Method.
- (b) Any Fishing, whether commercial, non-commercial, sport, subsistence, or for Cultural Uses, by the use of explosives, poisons, a Bleaching Agent, other noxious or Toxicant substances, Cyanide Fishing, electric shocking devices, SCUBA equipment or hookah equipment when Taking or Fishing for Fish or Shellfish or harvesting other marine life, including but not limited to the use of *ava niu kini* for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught
- (c) Any fisherman to carry or have in a fishermen's possession or control any explosive, poison, or other noxious or Toxicant substance in circumstances indicating an intention to use such explosive, poison, or other noxious or Toxicant substance for any of the purposes referred to in this paragraph. Any explosive, poison or other noxious or Toxicant substance found on board any Fishing Vessel, or in the possession of any Person on or in the Waters of American Samoa, unless the contrary can be proven, shall be presumed to be intended for the purpose referred to in this subsection.
- (d) The Taking or attempt to Take Fish or Shellfish with any electrical device that operates by shocking with an electrical current for the purpose of killing, stunning, disabling, Taking, or catching Fish or Shellfish, or in any way rendering Fish or Shellfish more easily caught. Any electrical shocking device found on board any Fishing Vessel, or found in the possession of any Person on or in the Waters of American Samoa, shall be presumed, unless the contrary can be proven, to be intended for the purpose referred to in this subsection.

- (e) Taking Fish by Fishing with the aid of any Self-Contained Underwater Breathing Apparatus (SCUBA) gear or any other Underwater Breathing Device except where exempted by the village and DMWR.
- (f) Using any light to attract Fish for the purpose of Fishing or Taking Fish from the period one hour before sunset until one hour after sunrise, whether the light is floating, moored, or handheld.
- (g) Taking Fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow.
- (h) Any Sand Mining in a Village’s Marine Protected Area without a Sand Mining permit from the Department.
- (i) The intentional dumping or discarding of any trash or garbage on the shoreline, beach or Reef of a Village Marine Protected Area.
- (j) The collection of any Fish or Shellfish or any marine organism for research unless a collection permit issued by the Department.

History: Rule 1-08, eff 2008.

24.1025 Damage to the Village Marine Protected Area.

It is a violation of the provisions of this Community-based Fisheries Management Program for any Person to deliberately or intentionally cause, or allow to be caused, any damage or destruction to the marine environment of any Village Marine Protected Area. This includes, but is not limited to:

- (a) The dumping of trash or garbage into a Village Marine Protected Area, including the shoreline, beach or reef of a Village Marine Protected Area.
- (b) The discharging of pollutants or Wastewater into a Village Marine Protected Area;
- (c) The discharging of pollutants into any stream, creek, ava, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will enter the Village Marine Protected Area.
- (d) The act of Sand Mining.

History: Rule 1-08, eff 2008.

24.1026 Protection of other Marine Life in a Village Marine Protected Area.

- (a) No living Coral or Live Rock may be Taken or removed from a Village Marine Protected Area.
- (b) No Marine Mammals or any part of a Marine Mammal may be Taken or removed from a Village Marine Protected Area.

History: Rule 1-08, eff 2008.

24.1027 Endangered Species.

No Person shall Take or attempt to Take any species of sea turtles and other endangered species listed as an endangered species in Title 50 of the Code of Federal Regulations sections 17.11 and 17.12, as amended or modified from time to time, or any species protected by any United States federal law.

History: Rule 1-08, eff 2008.

24.1028 Issuance of Citations – Penalties.

- (a) The Director and such department employees as the Director designates shall have the authority to issue citations for violations of these rules.
- (b) Penalties upon a finding of guilty shall be as follows:

SECTION	OFFENSE	1 ST Violation	2 nd Violation	3 rd Violation
24.1023	(c): i-v and xi	100.00	200.00	300.00
24.1023	(c): vi-xvi except xi	50.00	100.00	200.00
24.1024	(a) Using any fishing method other than the approved fishing methods	100.00	200.00	300.00
24.1025	(g) Taking fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow	50.00	100.00	200.00
	(h) Sandmining in Village Marine Protected Area without DMWR permit	Individual: 100.00	Individual: 200.00	Individual: 300.00

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		Corpora tion:	Corpo ration:	Corpo ration:
		100.00	300.00	500.00
	(i) Dumping/discarding trash on the shoreline beach or Reef of a Village Marine Protected Area	100.00	200.00	300.00
	(b) Discharging of pollutants or wastewater into a Village Marine Protected Area	100.00	200.00	300.00
SECTI ON 24.1023 24.1023	(c) Discharging of pollutants into any stream, creek, ava, river, estuary, swamp, water source, or upon the ground if there is a substantial likelihood that the pollutant will enter the Village Marine Protected Area	100.00	200.00	300.00
	OFFENSE	1 ST Vio lation	2 nd Vi olation	3 rd Vi olation
	(c): i-v and xi	100.00	200.00	300.00
	(c): vi-xvi except xi	50.00	100.00	200.00
	24.1024	(a) Using any fishing method other than the approved fishing methods	100.00	200.00
	(g) Taking fish or Shellfish with the use of or aid of a bow and arrow or crossbow and bolt or arrow	50.00	100.00	200.00

History: Rule 1-08, eff 2008.

24.1029 Confiscation, seizure, and forfeiture of property.

- (a) Property used in connection with a violation resulting in a conviction for violating any of the prohibited acts set forth in ASAC §24.1023 is subject to seizure and forfeiture.
- (b) Upon a conviction of a person in whose possession the property was found, the court having jurisdiction over the criminal offense, notwithstanding any jurisdictional limitations on the amount in controversy, may make a finding that the property was used in connection with a violation and may order such property forfeited to DMWR.
- (c) Notification of property seized under this section must be sent by certified mail to a registered owner within 14 days after seizure. If DMWR, after diligent inquiry, cannot ascertain the registered owner, the notice requirement is satisfied.
- (d) DESTRUCTION OR DISPOSITION OF PROPERTY.—All property forfeited under this section may be destroyed, used by DMWR, disposed of by gift to charitable or state institutions, or sold, with the proceeds derived from the sale deposited into the Fund to be used for law enforcement purposes.

History: Rule 1-08, eff 2008.

TITLE 24 – CHAPTER 11 – HUNTING

Sections

- 24.1101 Definitions.
- 24.1102 Season, Hunting areas, fees and Bag limits.
- 24.1104 Taking of pest species.
- 24.1105 Wild Birds.
- 24.1106 Native Bats
- 24.1107 Wild Pigs.
- 24.1108 Other Species.
- 24.1109 Licenses and Permits.
- 24.1110 Penalties.

24.1101 Definitions.

- (a) “Department” means the Department of Marine and Wildlife Resources (A.S.C.A. §24.0302(1)).

- (b) “Director” means the director DMWR (A.S.C.A., §24.0302(2)).
- (c) “Wildlife” means all mammals, birds reptiles and amphibians that exist in a wild state and shall not be taken except as authorized by rule of the director (A.S.C.A., §24.0302(6)).
- (d) “Hunting” means to take or attempt to take any wildlife species using guns, shotguns, bow and arrow, slingshot or spear. It also means to possess in a readily usable form any of these devices without a valid reason in any area where wildlife could be taken.
- (e) “Native Bat” means any of the bat species found in the territory of American Samoa including: Emballonura semicaudata, the sheath tailed bat, Pteropus tonganus, the white necked or tongan bat, and Pteropus samoensis, the samoan bat. The term includes bats in all stages of development and all body parts.
- (f) “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct.
- (g) “Trapping” means to take or attempt to take any wildlife species using passive devices such as spring traps, snares, deadfalls, mist nets, and pitfall traps. It does not include traps specifically designed or sold for the capture of rats and mice.
- (h) “Wild bird” means any bird species of the class Aves found in the territory of American Samoa.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1102 Season, Hunting areas, fees and Bag limits.

- (a) Each year, the director of the department shall issue a proclamation establishing the following for the taking of wildlife:
 - (1) Seasons,
 - (2) Hunting areas,
 - (3) License and permit fees, and
 - (4) Bag limits.

- (b) Annual proclamations shall be effective beginning on January 1st through December 31st of each year, or until superseded by further proclamation of the director.
- (c) Copies of the current proclamation will be made available at the department office in Fagatogo.
- (d) Any taking of wildlife, including hunting and trapping, not expressly allowed in the proclamation or otherwise permitted by law is prohibited.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1104 Taking of pest species.

- (a) The following wildlife may be taken at any time and no license or permit is required to take them:
 - (1) Rats and mice,
 - (2) The marine toad,
 - (3) The brown tree snake (*Boinga irregularis*), and
 - (4) Feral dogs and cats.
- (b) Other types of wildlife may be destroyed as pest species with a special permit issued by the department, as provided in this regulation.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1105 Wild Birds.

- (a) It is unlawful to take, attempt to take, or to hunt any species of wild bird unless explicitly allowed during an officially proclaimed hunting season.
- (b) It is unlawful to sell, offer for sale, or purchase any species of wild bird.
- (c) It is unlawful to possess any species of wild bird that was not taken during an officially proclaimed hunting season. There shall be a rebuttable presumption that wild birds in an unfrozen or unprocessed state were not taken during an official hunting season unless such a season is currently in progress.

- (d) It is unlawful to import or export any species of wild bird.
- (e) It is unlawful to trap or attempt to trap any species of wild bird.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1106 Native Bats

- (a) It is unlawful to take, attempt to take, or to hunt any species of native bat unless explicitly allowed during an officially proclaimed hunting season.
- (b) It is unlawful to sell, offer for sale, or purchase any species of native bat.
- (f) It is unlawful to possess any species of native bat that was not taken during an officially proclaimed hunting season. There shall be a rebuttable presumption that native bats in an unfrozen or unprocessed state were not taken during an official hunting season unless such a season is currently in progress.
- (g) It is unlawful to import or export any species of native bat.
- (h) It is unlawful to trap or attempt to trap any species of native bat.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1107 Wild Pigs.

- (a) After January 1, 1996 it is prohibited to take wild pigs without possessing a valid hunting license.
- (b) It is unlawful take wild pigs with shotguns of 16 gauge or smaller or with shotguns shooting shells containing #4 or smaller pellets.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1108 Other Species.

It is unlawful to take, attempt to take, import, export, sell, offer to sell, purchase or possess the pacific boa, *Candoia bibroni*.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1109 Licenses and Permits.

- (a) **Hunting License:** A hunting license is required for all individuals wishing to engage in hunting activities after January 1, 1996. This license shall be issued upon approval of the application and payment of the required fee. License fees shall be published in the annual proclamation.
- (b) **Scientific Collecting Permit:** Any person or institution with a bona fide scientific or educational purpose may apply in writing to the director for a Scientific Collection Permit. The director may deny, approve or establish conditions for any such permit.
- (c) **Pest eradication permit:** In cases where it can be demonstrated that a species of wildlife is causing significant economic damage or is creating a health or safety hazard, the affected party may apply to the Department for a Pest Eradication Permit. This permit may allow the permittee to take wildlife in a manner otherwise prohibited by these regulations. This permit may only be issued following a determination by the Department that its issuance will not result in significant impact to that species. The director may deny, approve or establish conditions for any such permit.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

24.1110 Penalties.

- (a) Pursuant to 24.0311 (a) A.S.C.A., any person who violates any provision of these laws shall be guilty of a class B misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) or by a prison term in excess of fifteen (15) days but not to exceed six (6) months, or by both.

- (b) Pursuant to 24.0311 (b) A.S.C.A., any business entity found in violation of these laws shall be fined not less than one thousand dollars (\$1,000) per violation.
- (c) Pursuant to 24.0311 (b) A.S.C.A., any property taken or possessed in violation of these laws may be subject to forfeiture to the government pursuant to a civil proceeding in the High Court of American Samoa.

History: Rule 5-95, eff. 25 July 95; Rule 3-12, eff. 1 Nov 12.

Amendments: 2012, changed chapter number from 08 to 11.

END OF TITLE 24 – ECOSYSTEM
PROTECTION AND DEVELOPMENT

TITLE 25 – ENVIRONMENTAL HEALTH

Chapters:

- 01 Food and Beverage Sanitation
- 02 Facility Health Permits
- 03 (Reserved)
- 04 Safe Drinking Water
- 05 Solid Waste

TITLE 25 – CHAPTER 01 – FOOD & BEVERAGE SANITATION

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- 25.0102 Enforcement authority. 4
- 25.0103 Inspection.
- 25.0104 Unwholesome or adulterated food or drink.
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II. FROZEN FOODS AND FROZEN DESSERTS

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- 25.0111 Approved products required-Possession of unapproved.
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- 25.0113 Internal temperature.
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- 25.0117 Building sanitation.
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I. **FOOD ESTABLISHMENTS
GENERALLY**

25.0101 Definitions.

The following definitions shall apply in the interpretation and enforcement of this article:

- (a) “Employee” means any person who handles food or drink during preparation or serving or who comes in contact with any eating or cooking utensils, or who is employed in a room in which food or drink is prepared or served.
- (b) “Food establishment” means a restaurant, grocery store, coffee shop, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain, and all other eating or drinking establishments, as well as bakeries or kitchens or other places in which food or drinks prepared for sale elsewhere.
- (c) “Person” means person, firm, corporation, or association.
- (d) “Utensils” includes any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.

History: Pub. Health Reg. 1, eff 19 Dec 63, § 1.

25.0102 Enforcement authority.

The director of health, public health officer, the chief sanitarian, or anyone appointed by the director is authorized to enforce any provisions of Title 25 A.S.C.A., or any rules promulgated thereunder.

History: Pub. Health Reg. 1, eff 19 Dec 63, § 2.

25.0103 Inspection.

The director of health or his agents shall inspect all food establishment within his jurisdiction as often as he deems necessary for the enforcement of the provisions of Title 25 A.S.C.A., or any rules promulgated thereunder. The person operating the food establishment shall, upon request of the director or his agents, permit access to all parts of the establishment and shall permit copying of any or all records of food purchased.

History: Pub. Health Reg. 1, eff 19 Dec 63, § 3.

25.0104 Unwholesome or adulterated food or drink.

Samples of food, drink, and other substances may be taken and examined by the director of health or his agents as often as may be necessary for the detection of unwholesomeness or adulteration. The director or his agents may condemn and forbid the sale of or cause to be removed or destroyed any food or drink which is unwholesome or adulterated.

History: Pub. Health Reg. 1, eff 19 Dec 63, § 4.

25.0105 Sanitation requirements.

All food establishments shall comply with the following items of sanitation:

- (a) Ratproofing. All buildings used to house a food establishment shall be made ratproof, freed of rats, and maintained in a ratproof and rat-free condition.
- (b) Floors. The floors of all rooms in which utensils are washed shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.
- (c) Walls and Ceilings. All openings into the outer air shall be kept clean and in good repair. All walls and ceilings of rooms in which food or drink is stored or prepared shall be finished in a light color. The walls of all rooms in which food or drink is prepared or utensils are washed shall

have a smooth, washable surface up to the level reached by splash or spray.

- (d) Doors and Windows. All openings into the outer air shall be effectively screened and doors shall be self-closing and open or unless other effective means are provided to prevent the entrance of flies.
- (e) Lighting. All rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted and well ventilated.
- (f) Toilet Facilities. Every food establishment shall be provided with adequate and conveniently located toilet facilities for its employees and guests; in food establishments hereafter constructed, toilet rooms shall not open directly into any room in which food, drink, or utensils are handled or stored. The doors of toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair and well lighted and ventilated. Hand-washing sinks shall be adequate and of safe, sanitary quality.
- (g) Water Supply. Hot and cold running water under pressure shall be easily accessible to all rooms in which food is prepared or utensils are washed, and the water supply shall be adequate and of safe, sanitary quality.
- (h) Lavatory Facilities. Adequate and convenient hand-washing facilities shall be provided. Running water, soap, and approved, sanitary towels shall be furnished by the management.

The use of a common towel is prohibited. No employee shall resume work after using the toilet room without first washing his hands. Handwashing signs shall be posted.

- (i) Construction of Utensils and Equipment. All multiuse utensils and all show and display cases or windows, counters, shelves, tables, refrigerating equipment, sinks, and other equipment or utensils used in connection with the operation of a restaurant shall be so constructed as to be easily cleaned and shall be kept in good repair.

- (j) Ventilation. All rooms in which food or drink is stored, prepared, or served or in which utensils are washed shall be well ventilated.

- (k) Cleanliness and Bactericidal Treatment. All equipment, including display cases or windows, counters, shelves, tables, refrigerator, stoves, hoods, and sinks, shall be kept clean and free from dust, dirt, insects and other contaminating material. All clothes used by waiters, chefs, and other employees shall be clean. Single-service containers shall be used only once. All multiuse eating and drinking utensils shall be thoroughly cleansed with hot water and an effective detergent, then effectively subjected to an approved bactericidal process after each usage. All multiuse utensils used in the preparation or serving of food and drink shall be thoroughly cleansed and effectively subjected to an approved bactericidal process immediately following the day's operation. Approved bactericidal processes shall include:

- (l) immersion for at least 2 minutes in clean hot water at a temperature of at least 180 degrees Fahrenheit or for ½ minute in boiling water. The pouring of scalding water over washed utensils shall not be accepted as satisfactory compliance. When hot water is used for bactericidal treatment, there shall be provided a hot water heater (preferably controlled by a thermostat) capable of maintaining a water temperature of at least 180 degrees Fahrenheit in the vat at all times during business hours and water at such temperature shall be available at all times while utensils are being washed and given bactericidal treatment. The heating device may be integral with the immersion vat.

- (1) Storage and Handling of Utensils, After bactericidal treatment utensils shall be stored in a clean, dry place protected from flies and dust and other contamination, and shall be handled in such a manner as to prevent contamination, as far as practicable. Single-service utensils shall be purchased only in sanitary containers, shall be stored there in a clean, dry place until used, and shall be handled in a sanitary manner.

- (m) Waste Disposal and Plumbing. All wastes shall be properly disposed of and all garbage and trash shall be kept in suitable receptacles in such manner as not to become a nuisance. Specific wastes shall be disposed of as listed below:
 - (1) Sanitary sewage and other liquid wastes shall be placed into a city sewage system, if such is available, or shall be disposed of in accordance with the provisions of Title 25 A.S.C.A. All plumbing in food establishments constructed after 19 Dec 63 shall be in conformance with the provisions of Title 25 A.S.C.A.
 - (2) Garbage shall be stored in metal covered containers which shall effectively prevent the garbage from being available, in order to prevent the breeding of flies, the harborage of rodents, or the creation of other nuisances.
- (n) Refrigeration. All readily perishable food and drink shall be kept at or below 40 degrees Fahrenheit except when being prepared or served.
- (o) Wholesomeness of Food and Drink. All food and drink shall be clean, wholesome, free from spoilage, and so prepared as to be safe for human consumption.
- (p) Storing, Displaying, and Serving Food and Drink. All food and drink shall be so stored, displayed, and served as to be protected from dust, flies, vermin, depredation, and pollution by rodents, unnecessary handling, droplet infection, overhead leakage, and other contamination. No live animals or fowls shall be kept or allowed in any room in which food and drink are prepared, stored, or served.
- (q) Employee Cleanliness. All employees shall wear clean outer gannets and shall keep their hands clean at all times while engaged in handling food, drink, utensils, or equipment. Employees shall not expectorate or use tobacco in any form in rooms in which food is prepared.
- (r) Employee Health. No person suffering from a communicable disease or known to be, or suspected of being a carrier of organisms causing

a communicable disease shall be employed in a food establishment or permitted to remain on the premises. Each employer shall have in his possession a certificate in writing for each employee from the director of health. Such certificate shall show the date of examination and shall not be accepted as in compliance with this section after a period of 12 months. Both employer and employee shall be held responsible for violation of the requirements of this section.

- (s) Miscellaneous. The premises of all food establishment shall be kept clean and free of litter or rubbish. None of the operations connected with a food establishment shall be conducted in any room used as living or sleeping quarters. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats, and aprons shall be kept in containers provided for that purpose.

History: Pub. Health Reg. 1, eff 19 Dec 63, § 5.

Editors Note: 2020 edition subsection (k)(1) showed "130 degrees Fahrenheit." ASDOH indicated this is scientifically incorrect. Review indicated "130" was a typo and was revised accordingly to "180 degrees Fahrenheit."

25.0106 Violation-Penalty.

Any person who violates this article is guilty of a class C misdemeanor and shall be, upon conviction, sentenced accordingly, as provided by 25.0110 A.S.C.A.

History: Pub. Health Reg. 1, eff 19 Dec 63, § 6.

II. FROZEN FOODS AND FROZEN DESSERTS

25.0110 Definitions.

The following words and phrases, as used in this article, shall mean:

- (a) "Approved product" means any item of frozen food produced in plants sanctioned by a competent regulatory authority which has been transported, delivered, received, or stored while being maintained in accordance with this article and not having been thawed and/or refrozen

unless determined by the director of health to be safe for consumption.

- (b) “Frozen foods” means any item of food or food product intended for human consumption which has been preserved by any method or process of freezing.
- (c) “Wholesale and retail distributors” means all public and private establishments, firms, corporations, markets, supermarkets, groceries, sundries, private and public clubs, restaurants, cafeterias, short-order cafes, luncheonettes, taverns, sandwich stands, soda fountains, kitchens, including wholesale dealers or agents, retail outlets to the public, and all other places in which frozen foods may be stored, or offered for sale.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 1 § 1.

**25.0111 Approved products required-
Possession of unapproved.**

Wholesale or retail distributors shall sell or offer for sale only approved products. The possession of unapproved products by the wholesale or retail outlet in his place of business or in a warehouse or storage room shall be prima facie evidence that possession is for the purpose of sale.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 1 § 2.

**25.0112 Approval-Inspections-Condemnation
and destruction.**

The director of health or his agents shall make inspections of the storage or retail display of frozen food. All products shall be approved or disapproved for consumption by the director or his agents after determining whether they are safe for consumption. Spoiled, thawed, or deteriorated frozen food products which are unsafe as food and dangerous to public health shall be condemned and destroyed.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 1 § 3.

25.0113 Internal temperature.

Wholesale and retail distributors of frozen foods shall display, store, and maintain the same in such a manner that the internal temperature thereof does not exceed 0 degrees Fahrenheit.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 1 § 4.

25.0114 Transportation.

- (a) Wholesale and retail outlets shall not accept delivery of frozen foods whose internal temperature exceeds, or has exceeded, twenty degrees Fahrenheit. After the product has been received it shall be the responsibility of the owner and/or manager to immediately place the frozen food into a storage area or display case maintaining a temperature of 0 degrees Fahrenheit or below. A temperature of 10 degrees Fahrenheit is recommended.
- (b) Extreme care shall be taken in the transportation of frozen foods to ensure that the product does not thaw in transit. The following equipment and procedure, subject to the limitations stated therein, shall be considered as prima facie evidence of compliance with the above requirements, to-wit:

- (1) Insulated Containers. Insulated containers may be used for transportation of frozen foods; provided, that the internal temperature of the frozen foods at no time exceeds 20 degrees Fahrenheit. It is recommended that such containers be precooled in the freezer.
- (2) Insulated Vehicles. When precooled to as low a temperature as possible, insulated vehicles may be used for transportation of frozen foods; provided, that the internal temperature of the frozen foods at no time exceeds 20 degrees Fahrenheit.
- (3) Refrigerated Vehicles. Vehicles which are equipped with refrigerating equipment adequate to maintain the internal temperature of frozen foods at 0 degrees Fahrenheit may be used without any restrictions so long as the equipment is properly operating.
- (4) Alternative Equipment. Any other equipment approved by the director of health as adequate to accomplish the purposes of this section may be used.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 1 § 5.

25.0115 Wholesale outlets.

Requirements for wholesale outlets of frozen foods:

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- (a) Temperature. All frozen food warehouses shall maintain a temperature of 0 degrees Fahrenheit or below in storage areas. A temperature of 10 degrees Fahrenheit is recommended.
- (b) Storage Manner. The products to be stored shall be placed on pallets, dunnage, or racks away from the walls to ensure adequate circulation of air. The products shall not be stacked in such a manner that air circulation is impeded.
- (c) Delivery Containers. It is recommended that containers used to deliver frozen foods be precooled in the freezer.
- (d) Thawed Foods. Frozen foods that have been thawed or partially thawed shall not be refrozen and sold unless determined by the director or his agents to be safe for consumption. This restriction shall not apply to frozen foods which are thawed for the purpose of incorporating them into another food product or for further processing.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 1 § 6.

25.0116 Retail outlet.

Requirements for retail outlets of frozen foods:

- (a) Thermometers. An accurate cabinet thermometer shall be provided for all display cases and storage areas. The thermometer bulb shall be located in the warmest zone.
- (b) Frozen Storage Area. Frozen products shall be moved into frozen storage immediately upon delivery. Frozen foods shall not be placed outside the storage areas or display cases at any time.
- (c) Loading of Product. Frozen food products shall not be loaded above the danger line, freezer line, glass, or mark on the display cases or in such a manner as to in anyway block the circulation of cold air.
- (d) Thawed Foods. Frozen foods that have been thawed or partially thawed shall not be refrozen and sold unless determined by the director of health or his agents to be safe for consumption. This restriction shall not apply to frozen foods which are thawed for the purpose of

incorporating them into another food product or for further processing.

- (e) Display, Maintenance, Condemnation and Destruction. The owner and/or manager of the retail outlet shall be responsible for proper display and maintenance of frozen food products. Any freezer case found to be overloaded or containing thawed or partially thawed foods shall subject the food products therein contained to condemnation and destruction in the manner provided in 25.0612.
- (f) Rotation on Shelf. The product at the retail level shall be rotated in such a manner that the product first in the display case or storage areas is the first product to be sold.

History: Pub. Health Rel 2, eff 7 Jan 64, Part 1 § 7(f).

25.0117 Building Sanitation.

All establishments in which frozen food or food products are sold or stored must at all times be kept in an approved, sanitary condition in compliance with all provisions of this article. All parts of buildings in which frozen foods and/or food products are handled or stored shall be kept clean and free from all contamination.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 1 § 8.

25.0118 Frozen desserts-Facilities for manufacture and sale.

Rules for the manufacture of frozen desserts in soft ice cream freezers, counter freezers, and custard machines:

- (a) Freezing and Hardening Units. Each freezing unit and hardening cabinet shall be enclosed in a room containing nothing which does not pertain to the manufacture and storage of frozen desserts and the desserts and the cleaning of equipment used in the manufacture of frozen desserts except that nonalcoholic beverages may be dispensed from a self-contained unit of bottles and sold to the consumers in a single, service, nonreturnable container which will not be returned to the freezing room. Each freezing unit and hardening cabinet shall be at least 18 inches from walls unless sealed to wall and floor.

(b) Sale or Dispensing of Other Commodities. The sale of any commodities other than frozen desserts upon any premises where frozen desserts are manufactured is strictly prohibited if such other commodities are in any way processed, mixed, made up, or put together upon the premises. The sale or dispensing of any commodities other than frozen desserts may be permitted from the premises where frozen desserts are manufactured; provided expressly, however, that such other commodities are both received in and upon the premises and sold or dispensed therefrom in sealed containers, and that the contents of such sealed containers are in no way altered while upon the premises. This provision as to commodities in sealed containers shall not permit the storage or stocking up thereof upon the premises, but is strictly limited to a day-to-day operation.

(c) Walls and Ceilings. Walls and ceilings shall be of suitable, smooth, impervious materials which shall have tight joints and be kept clean at all times.

(d) Serving Openings. If serving openings are used they shall not be more than 18 inches wide and 18 inches high, and there shall not be more than 2 serving openings to the room.

Openings shall not be directly in front of the freezer. Other dispensing cabinet openings shall be provided with proper closures.

(e) Lighting. Adequate natural and artificial light shall be provided.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 2 § 1.

25.0119 Frozen desserts-Cleaning and sanitizing facilities.

A hot water tank, with suitable heating facilities, of not less than 30 gallons capacity, shall be installed; hot water and cold water shall be piped to the wash sink and freezer location; enough hose shall be provided to run water into the freezer; after the freezer and parts have been thoroughly washed, they shall be assembled and subjected to a heat treatment at a temperature of not less than 180 degrees Fahrenheit for 2 minutes; provided, that nothing contained in this section shall be construed as disbaring any other process which has been demonstrated as of at least

equal efficiency and is approved by the director of health. A 2-compartment metal wash sink of sufficient size to accommodate the largest piece of equipment shall be provided so that the equipment may be submerged in hot water for washing purposes.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 2 § 2.

25.0120 Frozen desserts-Freezer and accessory cleaning.

Freezers and accessories shall be dismantled and valves taken apart after each day's use and thoroughly washed and sanitized.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 2 § 3.

25.0121 Frozen desserts-Cleaning powders and solutions.

Cleaning and sanitizing powders and solutions may be used in the cleaning and sanitizing of equipment and apparatus, but these powders and solutions shall not be used as substitutes for heat treatment.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 2 § 4.

25.0122 Frozen desserts-Sampling and testing.

Samples of frozen desserts and pasteurized mix may be tested as often as an inspector of the sanitation department requires. Samples of frozen desserts from stores, cafes, soda fountains, restaurants, hotels, boardinghouses, mobile units, and other places where frozen desserts are sold may be tested as often as the inspector requires. Bacterial plate counts and direct microscopic counts shall be made in conformity with the current minimum standards established or recommended by the American Public Health Association.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 2 § 5.

25.0123 Violation-Misdemeanor.

Any person who violates this article is guilty of a class C misdemeanor and shall be, upon conviction, sentenced accordingly, as provided by 25.0110 A.S.C.A.

History: Pub. Health Reg. 2, eff. 7 Jan 64, Part 2 § 6.

25.0124 Violation-Health permit suspension or revocation.

The director of health may suspend or revoke the health permit issued to any food establishment upon the violation by the holder, or by a person in his

employ or under his supervision or control, of any public health rule. Such suspension or revocation shall be subject to the same conditions provided by 25.0509 A.S.C.A.

History: Pub. Health Reg. 2, eff 7 Jan 64, Part 2 § 7.

III. MEAT MARKETS

25.0130 Definitions.

For the purpose of this article, the following definitions shall apply:

- (a) “Meat” means the edible part of the muscle of cattle, sheep, swine, or goats which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. The term “meat” also shall include fish, other seafoods, fowl, or game.
- (b) “Meat food products” means any article of food, or any article intended for or capable of being used as human food, which is derived or prepared, in whole or in substantial and definite part, from any portion of any cattle, sheep, swine, fish, other seafoods, fowl, game, or goat except such articles as organotherapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.
- (c) “Meat market” means and includes any buildings, houses, or enclosures in which meats or meat products are offered for sale.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 1.

25.0131 Building.

The building in which the meat market is located shall be of such construction and materials that it may be readily kept in a sanitary condition and in good repair. Buildings shall be free of rodents, flies, and other insects at all times.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 2.

25.0132 Area-floors.

Every meat market shall have sufficient floor area to accommodate all the necessary operations, All floors

shall be of smooth concrete, tile, or similar impervious material. Where drains are used, they must be trapped and shall connect with the sanitary sewerage system. Clean, sifted sawdust may be used on the floor, provided it is changed often enough to keep them in a clean and sanitary condition. Stored materials, meat, meat products and other foods, machinery, and merchandise shall be at least 8 inches above the floor, and so protected as not to interfere with cleaning of floors. Dry cleaning of floors shall not be permitted. Cleaning should be by washing, mopping, or sweeping, with water, moist sawdust, or sweeping compound. During this cleaning, all meat and meat products shall be covered or otherwise protected from dust and dirt.

History: Pub. Health Reg. 4 eff 13 Aug 64, § 3.

25.0133 Walls and ceilings.

All walls and ceilings in a meat market shall be constructed of smooth, washable, nonabsorbent material, free from cracks, crevices, and open joints, and shall be kept well painted. All right angles where walls and floors meet should be constructed with a rounded, sanitary joint so as to be easily cleaned. The walls and ceilings shall be cleaned frequently to prevent cobwebs and accumulations of dust, dirt, or other contaminating substances.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 4.

25.0134 Screening-Fly control.

All openings to the outside shall be effectively screened and such screens shall be kept in good repair. All screen doors shall open outward and shall be self-closing without leaving cracks through which flies and other insects may pass. All necessary procedures shall be carried out to control flies and the market shall be free from such at all times. Large fans protecting doorways may be used in lieu of screen doors, provided they are effective and kept in operation.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 5.

25.0135 Water and sanitary conveniences- Hand washing.

Water supply, toilets, washrooms, and other sanitary conveniences shall be furnished in meat markets in compliance with Article I. Signs shall be conspicuously posted requiring all help to wash hands

before beginning work and after each visit to the toilet.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 6.

25.0136 Wash sink.

A wash sink of sufficient size to permit complete immersion of utensils, with hot and cold running water and the necessary soap or washing powder, shall be installed for the washing of trays, utensils, and other equipment used in the market. Adequate protection to prevent splashing of the walls behind the sink shall be provided. Where no lavatory provisions are made for washing the hands, the wash sink shall be equipped with a combination faucet permitting the proper mixing of hot and cold running water, and the required soap and individual towels shall be furnished.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 7.

25.0137 Cleaning of utensils and equipment.

- (a) All counters, blocks, or other equipment upon which meat or meat products are handled shall be thoroughly cleaned at least once each day and as much or as often as necessary to keep them clean and sanitary. No trays, racks, meat racks, or containers shall be reused without thorough washing. All knives, saws, cleavers, grinders, and other tools, and utensils and machinery used in handling, cutting, chopping, grinding, mixing, or otherwise processing the meat or meat products, shall, at least once each day, be thoroughly cleaned and rinsed with hot water and a suitable soap, washing powder, or other detergent.
- (b) All meat blocks shall be free from holes, cracks, and crevices, and shall be kept clean by some effective method. No oil cloth or paper shall be used on any counter, table, or shelf where meat or meat products are handled, and clean, new wrapping paper only shall be used in weighing the products upon sale.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 8.

25.0138 Handling of meat and meat products.

- (a) Meat and meat products for sale or on display shall be properly covered to protect them effectively from contamination by flies, other

insects, dust, vermin, dirt, or from other sources of contamination.

- (b) No customers, or other persons not directly employed in the market, shall be permitted to handle fresh meats and meat products intended for sale to the public. Display cases shall be arranged to prevent such handling except when adequately packaged, wrapped, or similarly protected on display for customer services.
- (c) No fresh horse meat or fresh meat products, inspected or otherwise, shall be kept, sold, or exposed for sale for human consumption in any building where meat and meat food products are sold or offered for sale.
- (d) No meat product, except cured meats, shall be kept exposed outside of refrigerators or refrigerated display cases except in such quantities as are needed for immediate transfer or sale and shall be arranged in such display cases or refrigerators in an orderly, sanitary manner. Smoked or salted meat or meat products may be kept outside of refrigerators, provided they are in a clean box and raised well above the floor level, at least 8 inches. No meat shall be stored directly upon the floor. No animals shall be permitted in meat markets.
- (e) No meat or meat product shall be transported to or received into a meat market unless the meat, whether in entire carcasses, halves, quarters or cuts, has been thoroughly covered or wrapped in clean cloth, or unless the meat product has been packed in paper cartons, cellophane, or clean wrapping paper, so as to protect it completely during delivery from dust, dirt, flies, insects, rain, and other sources of contamination.
- (f) No meat or meat product shall be received into a meat market unless transported thereto in enclosed, refrigerated vehicles.
- (g) No meat or meat product shall be wrapped in newspapers or previously used wrapping paper.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 9.

25.0139 Refrigerator space, temperature, and cleaning.

Sufficient refrigerator space shall be provided to accommodate the volume of business conveniently. Refrigeration shall not be considered satisfactory if the temperature in any part of the refrigerator or display cases exceeds 40 degrees Fahrenheit any time. All refrigerators, meat boxes, and display cases shall be kept clean, sanitary, and free from objectionable odors. All treads, false floors, or other obstacles to the cleaning of floors and other parts in the refrigerator or cold storage room shall be easily removable. Drains from refrigerators, cold storage rooms, or display cases shall discharge into a sanitary sewer only through an air break and trap.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 10.

25.0140 Waste disposal.

All meat markets shall be provided with covered, galvanized-iron cans of sufficient size, not exceeding 20 gallons, and number to receive all refuse, offal, filth, meat scraps, bones, rubbish, and other waste materials that may originate around meat markets. Such cans shall be kept tightly covered at all times, so that the contents are kept protected from flies, insects, rodents, vermin, and animals. The contents of the cans shall be completely removed from the premises at least once every 24 hours, or refrigerated, and the cans thoroughly washed.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 11.

25.0141 Spoiled or tainted meat-Prohibited operations.

- (a) No spoiled or tainted meat or meat products shall be offered for sale, stored, or kept on the premises. No live poultry or live animals of any kind shall be kept in the sales room of the meat market, nor shall this room be used for sleeping or domestic purposes.
- (b) The evisceration, skinning, drawing, dressing, or any other operation other than the cutting, slicing, or grinding of meat or poultry to facilitate its use, handling or sale, is strictly prohibited in market sales rooms.

History: Pub. Health Reg, 4, eff 13 Aug 64, § 12.

25.0142 Employee health-Certificates of examination.

No person suffering from a communicable disease, or known to be, or suspected of being a carrier of a communicable disease or having open and unprotected cuts or lesions, shall be employed in a meat market or permitted to remain on the premises. Each employer shall have in his possession a certificate in writing for each employee from the director of health, stating that the employee has been thoroughly examined and the employee is found to be not suffering from any disease in a communicable stage. Such certificate shall show the date of examination and shall not be accepted as in compliance with this section after a period of 12 months from that date. Both employer and employee shall be held responsible for violation of the requirements of this section.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 13.

25.0143 Litter and cleanliness in premises and surroundings.

- (a) All waste materials, obsolete and unnecessary objects, and rubbish of all kinds, shall not be permitted to accumulate in or immediately around the market.
- (b) Storerooms, basements, closets, and other parts of the building, pens, or coops for poultry or live animals, and all outside premises, shall be kept in a clean, orderly, and sanitary manner.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 14.

25.0144 Enforcement authority-Unwholesome and unsafe foods.

It shall be the duty of the director of health or his agents duly authorized to enforce this article, to seize and destroy or render inedible any and all foods covered by this article found to be unwholesome or to be not produced and! or handled in compliance with this article or the A.S.C.A., so that they are rendered unsafe for human consumption.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 15.

25.0145 Living and sleeping quarters-Dressing rooms and lockers-Soiled laundry.

None of the operations connected with a meat market shall be conducted in any room used as living or

sleeping quarters. Adequate lockers or dressing-rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats, and aprons shall be kept in containers provided for this purpose.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 16.

25.0146 Health permit required.

It is unlawful for any person to operate a meat market in American Samoa who does not have a health permit from the director of health as required in 25.0501 A.S.C.A. Such a permit shall be posted in a place where people can see it. Only persons who meet the requirements of this article and the A.S.C.A., will be given a permit.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 17.

25.0147 Violations-Misdemeanor.

Any person who violates this article is guilty of a class C misdemeanor and shall, upon conviction, be sentenced accordingly, as provided by 25.0110 A.S.C.A.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 18.

25.0148 Violation-Health permit suspension or revocation.

The director of health may suspend or revoke the health permit issued to any meat market upon the violation by the holder, or by a person in his employ, or under his supervision or control, of any public health rule. Such suspension or revocation shall be subject to the same conditions provided by 25.0509 A.S.C.A.

History: Pub. Health Reg. 4, eff 13 Aug 64, § 19.

IV. ABATTOIRS

25.0150 Definitions.

For the purpose of this article the following definitions shall apply:

- (a) "Abattoir" means any slaughtering or meat processing, meat canning, curing, smoking, salting, rendering, or other similar establishment.
- (b) "Meat" means the edible part of the muscle of cattle, sheep, swine, or goats which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without

the accompanying or overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. "Meat" also includes fish, other seafoods, fowl, or game.

- (c) "Meat food products" means any articles of food or any article intended for or capable of being used as human food which is derived or prepared, in whole or in substantial and definite part, from any portion of any cattle, sheep, swine; fish, other seafoods, fowl, game, or goat.
- (d) "Offal" means the inedible portions of animals or poultry handled in the abattoir. This includes tankage from rendering tanks, hair, bones, paunch contents, manure, and similar material.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 1.

25.0151 New construction or remodeling approval.

One copy of the complete drawings covering drainage, sewerage, plumbing, and the treatment and disposal of wastes and sewage, for new plants or for remodeling or extending existing plants, shall be submitted to the director of health or his agents and approved in advance of construction.

History: Pub. Health Reg. 3, eff 23 Sep 64, § 2,

25.0152 Lighting-Ventilation.

There shall be abundant light, both natural and artificial, and sufficient ventilation in all rooms and parts of the plant to ensure proper sanitary conditions.

History: Pub. Health Reg. 3, eff 23 Sep 64, § 3.

25.0153 Plumbing, drainage, gutters.

There shall be an efficient drainage and plumbing system for the abattoir and premises, and all drains and all plumbing, drains, and gutters shall be properly trapped and vented.

History: Pub. Health Reg. 3, eff 23 Sep 64, § 4.

25.0154 Sewage and waste disposal.

- (a) Sanitary Sewage. All water-borne waste from toilets, lavatories, showers, and other facilities serving the employees shall be disposed of by treatment facilities approved by the director of health or his agents.

- (b) Industrial Waste. Industrial waste includes all solid and liquid waste produced in the preparation and processing of meat and meat products. Waste-treatment works shall be designed and constructed to treat the liquid-and liquid-borne solid waste in such a manner that it may be disposed of without creating a sanitary nuisance or otherwise affecting the receiving water to the detriment of persons, fish, aquatic life, and livestock. All liquid wastes shall be treated to separate solid offal. Plans for such treatment works shall be approved by the director of health or his agents prior to construction. All offal and other solid wastes shall be promptly removed from the abattoir and disposed of in a sanitary manner approved by the director of health or his agents.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 5.

25.0155 Water supply-Hot water.

- (a) The water supply shall be running, ample, clean, and potable, with adequate facilities for its distribution in the plant and its protection against contamination and pollution. Every establishment shall make known and, whenever required, shall afford opportunity for inspection of the system. Equipment using potable water shall be so installed as to prevent back-siphonage into the potable water system.
- (b) An ample supply of water at not less than 180 degrees Fahrenheit shall be furnished and used for the cleaning of equipment, floors, walls, and the like, which are subject to contamination by the dressing or handling of diseased carcasses, their viscera, and parts.
- (c) Hot water for cleaning rooms and equipment other than those mentioned in subsection (b) of this section shall be delivered under pressure to sufficient, convenient outlets and shall be of such temperature as to accomplish thorough cleanup.

History: Pub. Health Reg. 3, eff 23 Sep 64, § 6.

25.0156 Floors, walls, and ceilings.

The floors, walls, and ceilings, partitions, posts, doors, and other parts of all structures shall be of such materials, construction, and finish as will permit them to be readily and thoroughly cleaned. The floors shall

be of non-absorbent material, concrete or tile, and watertight, and shall be kept cleaned and in good repair. Walls shall be of impervious materials up to at least 6 feet.

History: Pub. Health Reg. 3, eff 23 Sep 64, § 7.

25.0157 Odor control.

The abattoir in general, and the rooms and compartments in which any meat or meat product is prepared or handled in particular, shall be as free from odors as is practical. Toilets, rooms, catch basins, hide cellars, casing rooms, offal tanks, fertilizer rooms, and stables shall be so located and separated in order to keep odors originating in these rooms from entering compartments where edible products are prepared or handled.

History: Pub. Health Reg. 3, eff 23 Sep 64, § 8.

25.0158 Insect and vermin control.

Every practicable precaution shall be taken to keep the abattoir free from flies, rats, mice, and other vermin. Compartments where edible products are handled shall be adequately screened so as to keep them free from flies. Insecticides and methods of application must be approved by the director of health or his agents. The construction of new buildings shall include all necessary provisions for preventing the ingress and egress of rats. The use of poisons for any purpose in rooms or compartments where any unpacked meat product is stored or handled is forbidden, except under such restriction or precautions as the director of health prescribes. The use of bait poisons in hide cellars, inedible compartments, outbuildings, or similar places, or in storerooms containing canned or tierced products is not forbidden, but so called rat viruses shall not be used in any part of the abattoir or premises thereof.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 9.

25.0159 Domestic animals.

Dogs, cats, or other domestic animals shall not be permitted in abattoirs.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 10.

25.0160 Sanitary facilities-Hand washing.

Adequate and convenient dressing rooms, lockers, commodes, urinals, lavatories, and showers shall be provided. Provision shall be made to furnish hot and

cold running water, soap, and approved, sanitary towels; the common towel is prohibited. No employee shall resume work after using the toilet facilities without first washing hands.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 11.

25.0161 Equipment and utensils-Inedible product receptacles.

Equipment and utensils used for preparation, processing, and otherwise handling any meat or meat products shall be of such materials and so constructed as will permit them to be easily and thoroughly cleaned. Knife scabbards shall be metal and kept clean. Adequate and conveniently located hot water shall be provided for cleansing and disinfecting all utensils. Receptacles used for inedible products shall bear some distinctive and conspicuous marking and shall not be used for handling edible products.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 12.

25.0162 Cleanliness and sanitation generally.

Rooms, compartments, places, equipment, and utensils used for preparing, storing, or otherwise handling any meat or meat product, and all other parts of the abattoir, shall be kept clean and sanitary. Operations and procedures involving the preparation, storing, or handling of any meat or meat product shall be strictly in accord with clean and sanitary methods. Racks must be kept at least 8 inches above the floor.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 13.

25.0163 Diseased carcass handling.

Butchers and others who dress or handle diseased carcasses or parts shall, before handling or dressing other carcasses or parts, cleanse their hands of grease, immerse them in a disinfectant of recognized and approved potency, and rinse them in clean water. Implements used in dressing diseased carcasses shall be thoroughly cleansed in boiling water.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 14.

25.0164 Aprons and frocks.

Aprons, frocks, and other outer clothing worn by persons who handle meat or meat products shall be of washable material, and only clean garments shall be worn.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 15.

25.0165 Spitting-Using mouth-Perspiration.

Such practices as spitting on whetstones, placing skewers or knives in the mouth, inflating lungs or casings, or testing with air from the mouth such receptacles as tierces, kegs, casks, and the like, containing or intended as containers of any meat or meat product, are prohibited. Care should be taken to prevent the contamination of meat with perspiration.

History: Pub. Health Reg. 3, eff 23 Sep 64, § 16.

25.0166 Secondhand containers.

Secondhand tubs, barrels, and boxes, intended for use as containers of meat or meat products, shall be inspected when received at the abattoir before they are cleaned. Those showing evidence of misuse rendering them unfit to serve as containers for food shall be rejected. The use of those in good condition shall be allowed only after thorough cleaning. Steaming after thorough scrubbing and rinsing is required.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 17.

25.0167 Vehicles-Transporting inedibles.

The vehicles in which any meat or meat product is transported shall be kept in a clean and sanitary condition. Vehicles used in transferring loose meat and meat products shall be closed and refrigerated. Trucks used for the hauling of inedible products shall be conspicuously marked and used only for this purpose. Inedible products shall be kept in covered metal containers when in transit.

History: Pub. Health Reg. 3, eff 23 Sep 64, § 18.

25.0168 Edible-product room separating-Other premises-Grease traps.

The rooms and compartments used for edible products shall be separate and distinct from those used for inedible products. All operating and storage rooms and departments of abattoirs used for inedible products shall be kept in acceptably clean condition. The outer premises of every abattoir, unloading docks and areas where vehicles are loaded, and the driveways, approaches, yards, pens, and alleys shall be properly drained and kept in clean and orderly condition. All catch basins and grease traps shall be so constructed and located to ensure proper attention in order to keep them in a clean and operative condition. Fly breeding shall be strictly prevented and

all material in which flies may breed shall be kept in fly-tight containers until removal from the premises. No nuisance shall be allowed in any abattoir or on its premises.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 19.

25.0169 Employee health-Certificates of examination.

No person suffering from a communicable disease, or known to be, or suspected of being a carrier of a communicable disease or open and unprotected cuts or lesions, shall be employed in an abattoir or permitted to remain on the premises. Each employer shall have in his possession a certificate, in writing, for each employee from the director of health, stating that the employee has been thoroughly examined and the employee is found to be not suffering from any disease in a communicable stage. Such certificate shall be renewed every 12 months. Both employer and employee shall be held responsible for violations of the requirements of this section.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 20.

25.0170 Horse and mules.

Equines owned or used by abattoirs on the premises shall be free of diseases communicable to man.

History: Pub. Health Reg. 3, eff 23 Sep 64, § 21.

25.0171 Refrigeration.

Sufficient refrigerator space shall be provided to conveniently accommodate the volume of business handled. The temperature of the refrigerator shall be so maintained as to prevent deterioration of the meat. Refrigerators shall be kept clean, sanitary, and free from objectionable odors. Drains from refrigerators shall discharge only through an air break and trap.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 22.

25.0172 Carcass inspection.

It shall be the duty of the director of agriculture or his agents to make ante mortem and post mortem inspections of all carcasses.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 23.

25.0173 Living or sleeping quarters-Dressing rooms and lockers-Soiled laundry.

None of the operations connected with an abattoir shall be conducted in any room used as living or

sleeping quarters. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats, and aprons shall be kept in containers provided for this purpose.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 24.

25.0174 Violation-Misdemeanor.

Any person who violates this article is guilty of a class C misdemeanor and shall, upon conviction, be sentenced accordingly, as provided by 25.0110 A.S.C.A.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 25.

25.0175 Violation-Health permit suspension or revocation.

The director of health may suspend or revoke the health permit issued to any abattoir upon violation by the holder, or by a person in his employ or under his supervision or control, or any public health rule. Such suspension or revocation shall be subject to the same conditions provided by 25.0509 A.S.C.A.

History: Pub. Health Reg. 5, eff 23 Sep 64, § 26.

25.0176 General purpose.

The rules set out in this article are promulgated by the Department of Agriculture of the Government of the territory or American Samoa in the interests of public health and safety, in order to allow the market place located in Fagatogo to best serve the need of the Farmers as well as the public.

History: Rule 6-84. eff 1 May 84. (part).

25.0177 Stalls.

- (a) Allocation of stalls will be assigned on a "first paid, first serve" basis.
- (b) No selling of produce is allowed until rental payment is made.
- (c) No seller will be allowed to sell any goods at the market until he has paid any and all previous debts for stall usage to the appropriate market attendant.
- (d) Each farmer is limited to the use of one stall at a time, except that he may rent additional stalls if they are available and at the discretion of the market manager.

- (e) Each farmer must be present at his stall at all times for proper office recording.
- (f) Each seller is responsible for the cleaning of his stall and surrounding areas during and after the selling of produce.
- (g) The sale of any food or beverages for immediate consumption is prohibited however such sales will be allowed on national holidays under such terms and conditions as the market manager may set forth.
- (h) The same rules shall apply for the rental of booths.

History: Rule 6-84. eff 1 May 84. (part).

25.0178 Rental rates.

The rental rates for the market shall be as follows:

- (a) Stalls-all stalls shall rent for \$2 per day/per stall.
- (b) Booths-all booths shall rent for \$15 per week/per booth.
- (c) Fish booth-a fish booth shall rent for \$2.00 per table/per fisherman.
- (d) Other market space-\$ 1.50 per seller per day in such location and manner as is determined by the market manager.
- (e) Cooler-the cooler, which is opened at 7:30 a.m. and 3:30 p.m. only, shall be available for rent at \$2 per piece/per night.
- (f) Bake sales-the rate shall be \$ 10 per group per day.
- (g) Bingo-the rate shall be \$200 per night per game. Receipts should be presented to the market attendant(s) before each game begins and all payments must be made at the revenue office.

History: Rule 6-84. eff 1 May 84, (part).

25.0179 Miscellaneous rules.

- (a) No beer or other alcoholic beverages of any type may be consumed on the market premises at any time.
- (b) Other than authorized bingo games, no gambling is allowed on the market premises at any time.

- (c) No fighting or profane language shall be allowed on the market premises at any time.
- (d) Sleeping on the market premises is not allowed except sellers of agricultural products or their agents may be allowed to sleep only on Friday nights.
- (e) No children under the age of 18 years shall be allowed within the market place during bingo games held at the market.
- (f) Littering on the market premises is strictly prohibited.
- (g) A health permit is required by all sellers of bake sales.
- (h) The market shall be closed on legal holidays and the selling of produce on legal holidays is prohibited except that the Director of Agriculture, at his discretion, may allow the market to be open on legal holidays.

History: Rule 6-84. eff 1 May 84, (part).

25.0180 Penalty for noncompliance.

The penalty for noncompliance of any portion of Sections 25.0176 through 25.0179 inclusive is sufficient cause for immediate eviction of an individual or organization from the market.

History: Rule 6-84. eff 1 May 84. (part).

TITLE 25 – CHAPTER 02 – FACILITY HEALTH PERMITS

Sections:

- 25.0201 Definitions.
- 25.0202 Health permits required.
- 25.0203 Health certificates for barbers and beauticians.
- 25.0204 Inspection.
- 25.0205 Sanitation rules.
- 25.0206 Violation-Health permit suspension or revocation.

25.0201 Definitions.

The following definitions shall apply in the interpretation and enforcement of this article:

- (a) “Barber.” or “beautician” means any person who personally or by any other person, for pay, shaves or trims the beard, cuts the hair, gives, facial and scalp massages, facial and scalp treatments with oils and creams and other preparations made for that purpose, either by hand or by mechanical appliances, singses and shampoos the hair, sets the hair, or gives permanent waves.
- (b) “Barbershop” or “beauty shop” means any place wherein the hair is cut, singed, shampooed, set, or waved, the beard is trimmed or the face, and/or the scalp is shaved, massaged or treated with oils, creams, or any other preparation made for that purpose either manually or by mechanical appliance for pay.

History: Pub. Health Reg. 3, eff 16 Jul 64, § 1.

25.0202 Health permits required.

It is unlawful for any person to operate a barbershop or beauty shop in American Samoa who does not have a health permit from the director of health as required in 25.0501 A.S.C.A. Such a permit shall be posted in a place where people can see it. Only persons who meet the requirements of this article and the A.S.C.A., will be given a permit.

History: Pub. Health Reg. 3, eff 6 Jul 64, § 2.

25.0203 Health certificates for barbers and beauticians.

All barbers or beauticians must be examined by the public health department at least once in every 12 months. They will be given a certificate which must be kept on their person when working in a barber shop or beauty shop. No barber will be employed in a barbershop and/or no beautician will be employed in a beauty shop who does not have a valid certificate of health.

History: Pub. Health Reg. 3, eff 16 Jul 64, § 3.

25.0204 Inspection.

At least once in every 6 months the chief sanitarian or his agents will inspect every barbershop or beauty shop within American Samoa. One copy of the inspection report will be filed with the public health department and 1 copy will be posted in a conspicuous place on the premises.

History: Pub. Health Reg. 3, eff 16 Jul 64, § 4.

25.0205 Sanitation rules.

- (a) Building. The building must be of a type that can be kept clean;
- (b) Hand Washing Facilities. There must be a place for washing hands, providing water, soap, and clean towels.
- (c) Toilet. There must be a clean toilet available on the premises.
- (d) Equipment and Utensils. All equipment and utensils must be in good repair and kept clean.
- (e) Waste Disposal. All waste must be properly disposed of. Garbage and trash must be kept in suitable metal containers with close fitting lids. After emptying, containers must be cleaned.
- (f) Personnel Clothing and Cleanliness: All barbers or beauticians must wear clean clothing and must keep their hands and body well washed. Their hair must be neat, clean and free of lice.
- (g) Animals or Fowl. No animals or fowl shall be kept or allowed in a barbershop or beauty shop.
- (h) Premises. The premises must be kept clean and reasonably free of all litter, rubbish, flies, rats, and harmful things.
- (i) Communicable Disease. The barber or beautician must be free of any communicable disease.
- (j) No person suffering from a communicable disease or eruption of the face, scalp, or neck shall be served in a barber shop or beauty shop.
- (k) Shaving Mugs and Brushes. Shaving mugs and lather brushes must be thoroughly cleansed with hot water or by some other method approved by the director of health.
- (l) Instruments. All razors, scissors, needles, pincers, and other instruments shall be cleansed and sterilized after each separate use, either by boiling in water for 5 minutes or by some other method approved by the director of health.
- (m) Combs and Brushes. Combs and brushes must be kept thoroughly cleansed with soap and hot

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- water or by some other method approved by the director of health.
- (n) Styptics. The use of styptic sticks or pencils is prohibited. Materials used for this purpose must be in powered or liquid form.
- (o) Powder Puffs and Sponges. The use of powder puffs and sponges is prohibited.
- (p) Towels. Towels must be properly laundered in soap and hot water.
- (q) Violations. Any employee who fails to maintain cleanliness of person or habits or who neglects to wash his hands before resuming work after visiting the toilet, or who does not properly use, misuses, or improperly cares for any appliance or instrument used for the care of the hair, scalp, or face, or used for the care of such instruments or appliances, is guilty of an offense against this article.
- (r) Posting Provisions. A copy of this article shall be posted in the barbershop or beauty shop where the barbers, beauticians, and customers can see it.

History: Pub. Health Reg. 3, eff 16 Jul 64, § 5.

25.0206 Violation-Health permit suspension or revocation.

The director of health may suspend or revoke the health permit issued to any barbershop or beauty shop upon the violation by the holder, or by a person in his employ or under his supervision or control, of any public health rule. Such suspension or revocation shall be invoked pursuant to and as provided in 25.0509 A.S.C.A.

History: Pub. Health Reg. 3, eff 16 Jul 64, § 6.

TITLE 25 – CHAPTER 03 – (RESERVED)

TITLE 25 – CHAPTER 04 – SAFE DRINKING WATER

Sections:

- 25.0401 Definitions
 25.0402 Operation & Maintenance
 25.0403 Water Facility Design & Construction

- 25.0403.1 Minimum Design Criteria
 25.0403.2 Wells
 25.0403.3 Storage Requirements
 25.0403.4 Standards for Additives, Materials, and Equipment
 25.0403.5 Application for Approval to Construct
 25.0403.6 Compliance with Approved Engineering Drawings and Specifications
 25.0403.7 Approval of Construction
 25.0403.8 As-Build Drawings
 25.0403.9 Modification to Existing Treatment Process
 25.0404 Certified Operators
 25.0405 Backflow Prevention
 25.0406 Emergency Operations Plan
 25.0407 Unsafe Supplies
 25.0408 Sanitary Surveys
 25.0409 Hauled Water
 25.041 Bottling Water for Sale
 25.0411 Violation - Penalty
 25.0420.1 Authority
 25.0420.100 Criteria and Procedures for Public Water Systems Using Point-of-Entry Devices
 25.0420.101 Use of Bottled Water
 25.0420.11 Maximum Containment Levels for Inorganic Chemicals
 25.0420.110 General Requirement
 25.0420.111 Treatment Techniques for Acrylamide and Epichlorohydrin
 25.0420.120 Maximum Containment Levels for Total Trihalomethanes
 25.0420.130 Maximum Containment Levels for Turbidity
 25.0420.130 General Requirements
 25.0420.131 Analytical Requirements
 25.0420.132 Monitoring Requirements
 25.0420.133 Compliance Requirements
 25.0420.134 Reporting and Record Keeping Requirements
 25.0420.135 Treatment Technique for Control of Disinfection Byproducts (DBP) Precursors
 25.0420.15 Maximum Contaminant Levels for Radium-226, Radium-228, and Gross Alpha Particle Radioactivity in Community Water Systems.

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25.0420.151	Purpose and Applicability of this Subpart.	25.0420.22	Turbidity Sampling and Analytical Requirements.
25.0420.152	Effective Dates.	25.0420.23	Inorganic Chemical Sampling Analytical Requirements.
25.0420.153	Content of the Reports.	25.0420.24	Organic Chemicals Sampling and Analytical Requirements.
25.0420.154	Required Additional Health Information.	25.0420.25	Analytical Methods for Radioactivity.
25.0420.155	Report Delivery and Record Keeping	25.0420.26	Monitoring Frequency for Radioactivity in Community Water Systems.
25.0420.16	Maximum Contaminant Levels for Beta Particle and Photon Radioactivity from Man-made Radionuclides in Community Water Systems.	25.0420.27	Alternate Analytical Techniques.
25.0420.170	General Requirements.	25.0420.28	Certified Laboratories.
25.0420.171	Criteria for Avoiding Filtration.	25.0420.29	Monitoring of Consecutive Public Water Systems.
25.0420.172	Disinfection Profiling and Benchmarking.	25.0420.3	Coverage.
25.0420.173	Filtration.	25.0420.30	Total Trihalomethanes Sampling, Analytical and Other Requirements.
25.0420.174	Filtration Sampling Requirements.	25.0420.31	Reporting Requirements.
25.0420.175	Reporting and Record Keeping Requirements.	25.0420.32	Public Notification.
25.0420.200	Definitions.	25.0420.33	Record Maintenance.
25.0420.201	General Public Notification Requirements.	25.0420.34	Reporting and Public Notification for Certain Unregulated Contaminants.
25.0420.202	Tier 1 Public Notice – Form, Manner, and Frequency of Notice.	25.0420.4	Variances and Exemptions.
25.0420.203	Tier 2 Public Notice – Form, Manner, and Frequency of Notice.	25.0420.40	Monitoring Requirements for Unregulated Contaminants.
25.0420.204	Tier 3 Public Notice – Form, Manner, and Frequency of Notice.	25.0420.41	Special Monitoring for Sodium.
25.0420.205	Content of the Public Notice.	25.0420.42	Special Monitoring for Corrosivity Characteristics.
25.0420.206	Notice to New Billing Units or New Customers.	25.0420.43	Prohibition on Use of Lead Pipes, Solder, and Flux.
25.0420.207	Special Notice of the Availability of Unregulated Contaminant Monitoring Results.	25.0420.5	Siting Requirements and Plan Review
25.0420.208	Special Notice for Exceedance of the SMCL for Fluoride.	25.0420.50	Maximum Contaminant Level Goals for Organic Contaminants.
25.0420.209	Special Notice for Nitrate Exceedances Above MCL by Non-community Water Systems (NCWS), Where Granted Permission by the Primacy Agency Under 141.11(d).	25.0420.501	Who is subject to the requirements of subpart T?
25.0420.21	Coliform Sampling.	25.0420.502	When must my system comply with these requirements?
25.0420.210	Notice by Primacy Agency on Behalf of the Public Water System.	25.0420.503	What does subpart T require?
		25.0420.51	Maximum Contaminant Level Goals for Inorganic Contaminants.
		25.0420.510	Is my system subject to the new finished water reservoir requirements?

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25.0420.511	What is required of new finished water reservoirs?	25.0420.544	What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?
25.0420.52	Maximum Contaminant Level Goals for Microbiological Contaminants.	25.0420.550	Is my system required to meet subpart T combined filter effluent turbidity limits?
25.0420.520	Is my system subject to the updated watershed control requirements?	25.0420.551	What strengthened combined filter effluent turbidity limits must my system meet?
25.0420.521	What updated watershed control requirements must my unfiltered system implement to continue to avoid filtration?	25.0420.552	My system consists of “alternative filtration” and is required to conduct a demonstration—what is required of my system and how does the State establish my turbidity limits?
25.0420.522	How does the State determine whether my system’s watershed control requirements are adequate?	25.0420.553	My system practices lime softening—is there any special provision regarding my combined filter effluent?
25.0420.53	Maximum Contaminant Level Goals for Disinfection Byproducts.	25.0420.560	Is my system subject to individual filter turbidity requirements?
25.0420.530	What is a disinfection profile and who must develop one?	25.0420.561	What happens if my system’s turbidity monitoring equipment fails?
25.0420.531	What criteria must a State use to determine that a profile is unnecessary?	25.0420.562	My system only has two or fewer filters—is there any special provision regarding individual filter turbidity monitoring?
25.0420.532	How does my system develop a disinfection profile and when must it begin?	25.0420.563	What follow-up action is my system required to take based on continuous turbidity monitoring?
25.0420.533	What data must my system collect to calculate a disinfection profile?	25.0420.564	My system practices lime softening—is there any special provision regarding my individual filter turbidity monitoring?
25.0420.534	How does my system use this data to calculate an inactivation ratio?	25.0420.570	What does subpart T require that my system report to the State?
25.0420.535	What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?	25.0420.571	What records does subpart T require my system to keep?
25.0420.536	My system has developed an inactivation ratio; what must we do now?	25.0420.6	Effective Dates.
25.0420.54	Maximum Residual Disinfectant Level Goals for Disinfectants.	25.0420.60	Effective Dates.
25.0420.540	Who has to develop a disinfection benchmark?	25.0420.61	Maximum Contaminant Levels for Organic Contaminants.
25.0420.541	What are significant changes to disinfection practice?	25.0420.62	Maximum Contaminant Levels for Inorganic Contaminants.
25.0420.542	What must my system do if we are considering a significant change to disinfection practices?	25.0420.63	Maximum Contaminant Levels (MCLs) for Microbiological Contaminants.
25.0420.543	How is the disinfection benchmark calculated?		

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25.0420.64	Maximum Contaminant Levels for Disinfection Byproducts.	25.0460.3	Samples accepted and charged:
25.0420.65	Maximum Residual Disinfectant Levels.	25.0460.4	Payment of Lab Fees:
25.0420.70	General Requirements.	25.0460.5	Creation of Lab Fee Fund Account:
25.0420.71	Criteria for Avoiding Filtration.	<hr/>	
25.0420.72	Disinfection.	<u>25.0401 Definitions</u>	
25.0420.73	Filtration.	The following definitions apply in this section.	
25.0420.74	Analytical and Monitoring Requirements.	“Annular space” means the space between any two casings or between the outer casing and the walls of the borehole.	
25.0420.75	Reporting and Record Keeping Requirements.	“AS-EPA” means the American Samoa Environmental Protection Agency.	
25.0420.80	General Requirements.	“ASPA” means the American Samoa Power Authority.	
25.0420.81	Applicability of Corrosion Control Treatment Steps to Small, Medium-size and Large Water Systems.	“Air-gap separation” means a physical separation, between the discharge end of a supply pipe and the top rim of its receiving vessel, of at least one inch or twice the diameter of the supply pipe, whichever is greater.	
25.0420.82	Description of Corrosion Control Treatment Requirements.	“ANSI/NSF Standard 60” means American National Standards Institute/National Sanitation Foundation International Standard 60 – 2000a, Drinking Water Treatment Chemicals – Health Effects, November 2000, incorporated by reference and on file with AS-EPA. This material is available from NSF International, 789 North Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA, (734) 769-8010, http://www.nsf.org . This incorporation by reference includes no future editions or amendments.	
25.0420.83	Source Water Treatment Requirements.	“ANSI/NSF Standard 61” means American National Standards Institute/ National Sanitation Foundation International Standard 61 – 2000a, Drinking Water System Components – Health Effects, November 2000, incorporated by reference and on file with AS-EPA. This material is available from NSF International, 789 North Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA, (734) 769-8010, http://www.nsf.org . This incorporation by reference includes no future editions or amendments.	
25.0420.84	Lead Service Line Replacement Requirements		
25.0420.85	Public Education and Supplemental Monitoring Requirements.		
25.0420.86	Monitoring Requirements for Lead and Copper in Tap Water.		
25.0420.87	Monitoring Requirements for Water Quality Parameters.		
25.0420.88	Monitoring Requirements for Lead and Copper in Source Water.		
25.0420.89	Analytical Methods.		
25.0420.90	Reporting Requirements.		
25.0420.91	Record Keeping Requirements.		
25.0430.1	Entry and Inspection		
25.0430.2	Appeal		
25.0430.3	Conflicts with Standards and Regulations.		
25.0430.4	Severability Clause		
25.0440.1	Purpose.		
25.0440.2	Definitions.		
25.0440.3	Secondary Maximum Contaminant Levels.		
25.0440.4	Monitoring		
25.0450.1	Suitability Determination		
25.0460.1	Establishment of fee:		
25.0460.2	Public Notice of fees:		

water pressure (backpressure), a vacuum or partial vacuum (back-siphon), or a combination of both.

“Backflow-prevention assembly” means a mechanical device used to prevent backflow.

“Baseline sampling” means the initial monitoring of contaminants required for each source before it can supply water to a public water system.

“Contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

“Casing” means the tubular material utilized to shut off the aquifer above the source bed and conduct water from the source to the wellhead.

“Certified operator” means a water treatment or water distribution operator who is currently certified in one of the 50 States in the United States of America or is certified by an independent operator certification program recognized and accepted by AS-EPA to operate a water treatment or water distribution system. This term also implies that the operator must not exceed the authority of the certification as defined in the State where the certification was obtained.

“Cross connection” means a physical connection between a public water system and any source of water or other substance that may lead to contamination of the water provided by the public water system through backflow.

“Director” means the Director of the American Samoa Environmental Protection Agency.

“Distribution pipeline system” means an appurtenance, device, and facility of a public water system that conducts water from a source or water treatment plant to persons served by the system.

“Double check valve assembly” means a backflow-prevention assembly that contains two independently acting check valves with tightly closing, resilient-seated shut-off valves on each end of the assembly and properly located, resilient-seated test cocks.

“EPA” means the United States Environmental Protection Agency.

“Groundwater system” means a public water system that is supplied solely by groundwater that is not under the direct influence of surface water.

“Groundwater under the direct influence of surface water” means any water beneath the surface of the ground with: A significant occurrence of insects or other macro organisms, algae, large-diameter pathogens such as *Giardia lamblia*, or total coliform, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH that closely correlate to climatological or surface water conditions.

“MCL” means Maximum Contaminant Level

“NSF International” means National Sanitation Foundation International, 789 North Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; <http://www.nsf.org>.

“Pollution” means any matter, which renders water objectionable or dangerous to health.

“Professional engineer” means an engineer that holds a professional engineers license in one of the 50 States in the United States of America to practice engineering. This term also implies that the certification is current and has not expired. This term also implies that the engineer must not practice outside the authority of the license or area of competence as defined in the State where the license was issued.

“Public water system” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances; if that system has at least 15 service connections or regularly serves at least 25 individuals. Constructed conveyances may include glass and/or plastic single and multi-use bottles if the source water for filling those bottles is not also an AS-EPA public water system. A public water system includes:

- (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system;
- (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such systems.

“Residual disinfectant concentration” and “RDCs” mean the concentration of disinfectant measured in mg/L in a representative sample of water.

“Safe Drinking Water Act” means the federal Safe Drinking Water Act as amended (42 U.S.C. 300f et seq., Title XIV of the Public Health Service Act).

“Source bed” means the stratum from which water is drawn in the well.

“Ten State Standards” means the Recommended Standards for Water Works, Great Lakes Upper Mississippi River Board (Ten State Standards), 1997. This incorporation by reference includes no future editions or amendments.

“Well” means any artificial bored or drilled opening in the ground, whose depth is greater than it is wide, designed to conduct water from a source bed to the surface.

History: Rule 1-08, eff 1 Jun 08.

25.0402 Operation & Maintenance

A water supplier shall maintain and keep in proper operating condition all facilities used in production, treatment, and distribution of the water supply so as to comply with the requirements of this Chapter.

History: Rule 1-08, eff 1 Jun 08.

25.0403 Water Facility Design & Construction

Editors Note – 12 Dec 2021 – no text found.

25.0403.1 Minimum Design Criteria

- (1) A public water system shall be designed using good engineering practices. A public water system which is designed in a manner consistent with the criteria contained in the Ten State Standards or other industry-accepted standards shall be considered to be designed using good engineering practices.
- (2) A potable water distribution system shall be designed to maintain and shall maintain a pressure of at least 20 pounds per square inch at ground level at all points in the distribution system under all conditions of flow.
- (3) Water and sewer mains shall be separated in order to protect public water systems from possible contamination. All distances are

measured perpendicularly from the outside of the sewer main to the outside of the water main. Separation requirements are as follows:

- (a) A water main shall not be placed:
 1. Within 6 feet, horizontal distance, and less than 2 feet, vertical distance, above the top of a sewer main unless extra protection is provided. Extra protection shall consist of constructing the sewer main with mechanical joint ductile iron pipe or with slip-joint ductile iron pipe if joint restraint is provided. Alternate extra protection shall consist of encasing both the water and sewer mains in at least 6 inches of concrete for at least 10 feet beyond the area specified by this subsection (3)(a)1.
 2. Beneath a sewer line.
- (b) No water pipe shall pass through or come into contact with any part of a sewer manhole. The minimum horizontal separation between water mains and manholes shall be 6 feet, measured from the center of the manhole.
- (c) The separation between force mains or pressure sewers and water mains shall be not less than 2 feet vertically and not less than 6 feet horizontally under all conditions. Where a sewer force main crosses less than 6 feet below a water line, the sewer and water mains shall be encased in at least 6 inches of concrete or constructed using mechanical joint ductile iron pipe for not less than 10 feet on either side of the water main. No sewer force main shall cross above a water main.
- (d) Sewer mains (gravity, pressure, and force) shall be kept a minimum of 50 feet from wells unless the following conditions are met:
 1. Water main pipe, pressure tested in place to 50 psi without excessive leakage, is used for gravity sewers at

distances greater than 20 feet but less than 50 feet from any well; or

2. Water main pipe, pressure tested in place to 150 psi without excessive leakage, is used for pressure sewers and force mains at distances greater than 20 feet but less than 50 feet from any well. “Excessive leakage” means any amount of leakage which is greater than that permitted under the AWWA Installation Standard applicable to the particular pipe material, joint, or valve type.
3. Under no condition shall a sewer conveyance, including lines, manholes and lift stations, be constructed within 20 feet of any well.

- (4) A public water system shall not construct or add to its system a well which is located:
 - (a) Within 50 feet of existing sewers unless the sewer main has been constructed in accordance with subsection (3)(d)1 or 2 of this Section;
 - (b) Within 100 feet of any existing septic tank or subsurface disposal system;
 - (c) Within 100 feet of a discharge or activity that is a potential source of contamination; or
 - (d) Within 100 feet of an underground storage tank containing petroleum products or other potential contaminant.

History: Rule 1-08, eff 1 Jun 08.

25.0403.2 Wells

(1) Location

- (a) Well sites shall be on ground that is not subject to ponding or flooding. In general, the slope of the ground surface in the vicinity of the well site shall be away from the well, if practical. For level areas, well-tamped earth shall be placed around the well so as to elevate the platform or apron.
- (b) As far as is practical, when the direction of ground water flow is known, wells shall be

located on the upstream side of the possible sources of pollution and as far from these sources as practical.

(2) Surface Seal

Wells drilled by any method shall have, at minimum, the top 20 feet of the annular space between the boring and the casing sealed by the use of a neat cement grout. The top of the casing shall be sealed to exclude influent.

(3) Well Head

The well head shall be constructed to exclude influent from entering the well and shall, at a minimum, have the following features:

- (a) Protection from the elements;
- (b) Pump to waste valve;
- (c) Sampling tap for raw water;
- (d) Flow meter;
- (e) Check valve;
- (f) Pressure gauge;
- (g) Sounding tube or other casing access port, sealed when not used;
- (h) Turned down screened vents on all air relief valves;
- (i) Well slab of 6ft by 6ft by 6in thick concrete;
- (j) Fence, 6ft high, locked, with appropriate security;
- (k) Chlorination, automatic flow-paced;
- (l) Sanitary well seal;
- (m) Solid casing (non-perforated) extending a minimum of one foot (12 inches) above the finished well slab grade.

(4) Pump pits

Constructing a well head in a below grade pump pit is not allowed.

(5) Well Abandonment

Wells no longer in use shall be plugged in a manner approved by the Director of AS-EPA

and ASPA water supply engineer. Capping the casing top is insufficient.

(6) Infiltration galleries and dug wells

Dug wells, infiltration galleries, and other such sources of water supply requiring rearrangement of natural features will automatically be considered suspect of being under the direct influence of surface water and will be subject to applicable surface water treatment regulations.

History: Rule 1-08, eff 1 Jun 08.

25.0403.3 Storage Requirements

The minimum storage capacity for a water system shall be equal to the average daily demand during the peak demand month. Storage capacity may be based on existing consumption and increased to meet future demand as the water system expands.

History: Rule 1-08, eff 1 Jun 08.

25.0403.4 Standards for Additives, Materials, and Equipment

(1) Each product added directly to water during production or treatment shall conform to ANSI/NSF Standard 60. Products covered by this subsection include but are not limited to:

- (a) Coagulation and flocculation chemicals;
- (b) Chemicals for corrosion and scale control;
- (c) Chemicals for softening, precipitation, sequestering, and pH adjustment;
- (d) Disinfection and oxidation chemicals;
- (e) Chemicals for fluoridation, defluoridation, algae control, and dechlorination;
- (f) Dyes and tracers;
- (g) Antifreezes, antifoamers, regenerants, and separation process scale inhibitors and cleaners; and
- (h) Water well drilling and well rehabilitation aids.

(2) Except as identified in subsections (4) and (5), a material or product that comes into contact with water or a water treatment chemical shall conform to ANSI/NSF Standard 61. Products

and materials covered by this subsection include but are not limited to:

- (a) Process media, such as carbon and sand;
- (b) Joining and sealing materials, such as solvents, cements, welding materials, and gaskets;
- (c) Lubricants;
- (d) Pipes and related products, such as tanks and fittings;
- (e) Mechanical devices used in treatment, transmission, or distribution systems such as valves, chlorinators, and separation membranes; and
- (f) Surface coatings and paints.

(3) Evidence that a product conforms to the requirements of this Section shall be the appearance on the product or product package of a seal of a certifying entity that is accredited by the American National Standards Institute to provide the certification.

(4) The Director shall consider standards for chemicals, materials, or equipment that have been certified by NSF International as complying with the standards required by this Section. In those instances where chemicals, materials, and equipment that come into contact with drinking water are essential to the design, construction, or operation of the drinking water system and have not been certified by NSF International or have NSF International certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:

- (a) Products composed entirely of ingredients determined by the Environmental Protection Agency, the Food and Drug Administration, or other federal agencies as appropriate for addition to potable water or aqueous food.
- (b) Products composed entirely of ingredients listed in the National Academy of Sciences “Water Chemicals Codex.”

- (c) Products consistent with the specifications of the American Water Works Association.
 - (d) Products that are designed for use in drinking water systems and that are consistent with the specifications of the American Society for Testing and Materials.
 - (e) Products that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination.
- (5) AS-EPA exempts the following materials and products from the requirement to conform to ANSI/NSF Standard 61:
- (a) A concrete structure, tank, or treatment tank basin constructed onsite that is not normally coated or sealed if the construction materials used in the concrete are consistent with subsection (5)(d). If a coating or sealant is specified by the design engineer, the coating or sealant shall comply with ANSI/NSF Standard 61;
 - (b) An earthen reservoir or canal located upstream of water treatment;
 - (c) A water treatment plant that is comprised of components that comply with subsections (2), (3), and (4);
 - (d) A synthetic tank constructed of material that meets Food and Drug Administration standards for a material that comes into contact with drinking water or aqueous food; or
 - (e) A pipe, treatment plant component, or water distribution system component made of lead-free stainless steel.

History: Rule 1-08, eff 1 Jun 08.

25.0403.5 Application for Approval to Construct

- (1) A person or public utility shall not start to construct a new public water system, modify an existing facility, including an extension to an existing public water system, or make an

alteration that will affect the treatment, capacity, water quality, flow, distribution, or operational performance of a public water system before receiving an Approval to Construct from AS-EPA. Designing or consulting engineers may confer with AS-EPA before proceeding with detailed designs of complex or innovative facilities. The following provisions shall apply:

- (a) An application for Approval to Construct, including the following documents and data, shall be submitted to AS-EPA:
 - 1. Detailed engineering design drawings of the site and work to be done, presented in legible form and of sufficient scale, to establish construction requirements to facilitate effective review;
 - 2. Complete engineering specifications to supplement engineering drawings, including materials specifications, special provisions for construction methods and manufacturers' installation recommendations;
 - 3. A design report that describes the proposed construction and basis of design, provides design data and other pertinent information that defines the work to be done, and establishes the adequacy of the design to meet the system demand;
 - 4. Complete baseline monitoring of a proposed new source of water that includes:
 - a. Microbiological; physical; radiochemical; inorganic, organic, and volatile organic chemicals; and
 - b. Microscopic particulates if the source is suspect of being ground water under the direct influence of surface water; and
 - 5. Other pertinent data required to evaluate the application for Approval to Construct.

(b) All engineering drawings, specifications, and design reports submitted for a public water system shall be prepared by, or under the supervision of, a registered professional engineer and have the seal and signature of the engineer affixed to them.

(2) AS-EPA shall act upon a complete Approval to Construct application submitted for approval within 30 days after its receipt. If AS-EPA fails to act upon a completed application within 30 days then the initial review requirement, approval to construct, shall be waived. However, other reviews will not be waived and the requirements of sections 25.0403.6 through 25.0403.9 must be met. Waiving the requirements of obtaining an Approval to Construct does not waive the requirements to meet the minimum design criteria in these regulations or the requirement to meet criteria consistent with good engineering practice.

(3) AS-EPA shall issue an Approval to Construct only when the following conditions have been met:

(a) Engineering drawings and specifications submitted to AS-EPA demonstrate that the proposed public water system can be reasonably expected to comply with this Chapter, including the Maximum Contaminant Levels (MCLs) in the American Samoa Primary Safe Drinking Water Standards (ASPDWS); and

(b) The water system is in compliance with this Chapter or can be reasonably expected to return to compliance with this Chapter as a result of the proposed construction.

(4) An Approval to Construct becomes void if an extension of time is not granted by AS-EPA within 90 days of any one of the following:

(a) Construction does not begin within one year after the date the Approval to Construct is issued, or

(b) There is a halt in construction of more than one year, or

(c) Construction is not completed within three years after the date construction begins.

History: Rule 1-08, eff 1 Jun 08.

25.0403.6 Compliance with Approved Engineering Drawings and Specifications

All construction shall conform to approved engineering drawings and specifications. In order to make a change in an approved design that will affect water quality, capacity, flow, sanitary features, or other performance characteristic, a public water system shall submit revised engineering drawings and specifications to AS-EPA for review, together with a written statement regarding the reasons for the change. The public water system shall not proceed with the construction affected by the design change without written approval from AS-EPA. Revisions not affecting water quality, capacity, flow, sanitary features, or other performance characteristic may be permitted during construction without further approval if As-Built drawings prepared by a registered professional engineer document these changes.

History: Rule 1-08, eff 1 Jun 08.

25.0403.7 Approval of Construction

(1) A person or entity shall not operate a newly constructed facility until an Approval of Construction is issued by AS-EPA.

(2) AS-EPA shall not issue an Approval of Construction on a newly constructed public water system, an extension to an existing public water system, or any alteration of an existing public water system that affects its treatment, capacity, water quality, flow, distribution, or other operational performance characteristic unless the following requirements are met:

(a) A registered professional engineer or a person under the direct supervision of a registered professional engineer has completed a final inspection and submitted a Certificate of Completion on a form approved by AS-EPA to which the seal and signature of the registered professional engineer have been affixed;

- (b) The construction conforms to approved engineering drawings and specifications, as indicated in the Certificate of Completion, and all changes have been documented by the submission of As-Built drawings;
 - (c) Quality control testing results and calculations, including pressure and microbiological testing, and disinfectant residual records, shall be submitted with the Engineer's Certificate of Completion together with field notes and the name of the individual witnessing the tests.
 - (d) AS-EPA has verified that the construction conforms to the approved engineering drawings and specifications;
 - (e) An operations and maintenance manual has been submitted and approved by AS-EPA if construction includes a new water treatment facility; and
 - (f) An operator, who is certified per Section 25.0404 at a grade appropriate for each facility, is employed to operate each water treatment plant and each potable water distribution system.
- (3) AS-EPA reserves the right to inspect all construction operations including the final inspection required in subsection (2)(a). The public water system must:
- (a) Notify AS-EPA at least 7 days before beginning construction on a public water system installation, change, or addition that is authorized by an Approval to Construct;
 - (b) Notify AS-EPA of completion of construction at least 10 working days before the expected completion date;
 - (c) Notify AS-EPA of key construction operations and allow time for AS-EPA to dispatch an inspector prior to final cover so that an adequate inspection can be made.

History: Rule 1-08, eff 1 Jun 08.

25.0403.8 As-Build Drawings

- (1) A registered professional engineer shall clearly and accurately record or mark, on a complete set

of project engineering drawings, each deviation from the original drawings and specifications and the dimensions of the deviation. The set of marked drawings becomes the As-Built drawings, reflecting the project as actually built.

- (2) A registered professional engineer shall sign, date, and place the engineer's seal on each sheet of the As-Built drawings and submit them to AS-EPA upon completion of the project. The As-Built drawings shall be accompanied by an Engineer's Certificate of Completion, signed by the registered professional engineer.

History: Rule 1-08, eff 1 Jun 08.

25.0403.9 Modification to Existing Treatment Process

Before a public water system may make a modification to its existing treatment process, the public water system shall submit a detailed plan to AS-EPA, in accordance with 25.0403.5 through 25.0403.8, for approval that explains the proposed modifications and the safeguards that the public water system will implement to ensure that the quality of the water served by the system will not be adversely affected by the modification.

History: Rule 1-08, eff 1 Jun 08.

25.0404 Certified Operators

- (1) A certified operator is a water treatment or water distribution operator who is currently certified in one of the 50 States in the United States of America or is certified by an independent operator certification program recognized and accepted by AS-EPA to operate a water treatment or water distribution system. This term also implies that the operator must not exceed the authority of the certification as defined in the State where the certification was obtained.
- (2) A water supplier of a public water system shall employ a certified operator who is certified to the appropriate level to operate each water treatment plant in the system and the distribution system. The same certified operator may be in direct responsible charge of one or more water treatment plants and the distribution system provided the operator holds an operator certificate of the appropriate type and level for

each facility. Separate operator certificates are required to operate a water treatment plant and a distribution system.

History: Rule 1-08, eff 1 Jun 08.

25.0405 Backflow Prevention

- (1) A public water system shall protect its system from contamination caused by backflow through unprotected cross-connections by requiring the installation and periodic testing of backflow-prevention assemblies. Required backflow-prevention assemblies shall be installed as close as practicable to the service connection.
- (2) A public water system shall ensure that a backflow-prevention assembly is installed whenever any of the following occur:
 - (a) A substance harmful to human health is handled in a manner that could permit its entry into the public water system. These substances include chemicals, chemical or biological process waters, water from public water supplies that has deteriorated in sanitary quality, and water that has entered a fire sprinkler system. A Class 1 or Class 2 fire sprinkler system is exempt from the requirements of this Section;
 - (b) A source of water supply exists on the user's premises that is not accepted as an additional source by the public water system or is not approved by AS-EPA;
 - (c) An unprotected cross-connection exists or a cross-connection problem has previously occurred within a user's premises; or
 - (d) There is a significant possibility that a cross-connection problem will occur and entry to the premises is restricted to the extent that cross-connection inspections cannot be made with sufficient frequency or on sufficiently short notice to assure that unprotected cross-connections do not exist.
- (3) Unless a cross-connection problem is specifically identified, or as otherwise provided in this Section, the requirements of this Section shall not apply to single family residences used solely for residential purposes.

- (4) A backflow-prevention assembly required by this Section shall comply with the following:
 - (a) If equipped with test cocks, it shall have been issued a certificate of approval by:
 - 1. The University of Southern California Foundation for Cross-Connection Control and Hydraulic Research (USC-FCCCHR), or
 - 2. A third-party certifying entity that is unrelated to the product's manufacturer or vendor, and is accepted by AS-EPA.
 - (b) If not equipped with test cocks, it shall be approved by a third-party certifying entity that is unrelated to the product's manufacturer or vendor and is accepted by AS-EPA.
- (5) The minimum level of backflow protection that must be provided to protect a public water system shall be the level recommended in Section 7.2 of the Manual of Cross-Connection Control, Ninth Edition, USC-FCCCHR, KAP-200 University Park MC-2531, Los Angeles, California, 90089-2531, December 1993, (no future editions or amendments), incorporated by reference and on file with AS-EPA. The types of backflow prevention that may be required, listed in decreasing order according to the level of protection they provide, include: an air-gap separation (AG), a reduced pressure principle backflow prevention (RP) assembly, a pressure vacuum breaker (PVB) assembly, and a double check valve (DC) assembly. Nothing contained in this Section shall prevent the public water system from requiring the use of a higher level of protection than that required by this subsection.
 - (a) A public water system may make installation of a required backflow-prevention assembly a condition of service. A user's failure to comply with this requirement shall be sufficient cause for the public water system to terminate water service.

- (b) Specific installation requirements for backflow prevention include the following:
 - 1. Any backflow prevention required by this Section shall be installed in accordance with the manufacturer’s specifications.
 - 2. For an AG installation, all piping between the user’s connection and the receiving tank shall be entirely visible unless otherwise approved in writing by the public water system.
 - 3. An RP assembly shall not be installed in a meter box, pit, or vault unless adequate drainage is provided.
 - 4. A PVB assembly may be installed for use on a landscape water irrigation system if the irrigation system conforms to all of the criteria listed in 4.a. through d. below. An RP assembly is required whenever any of the criteria are not met.
 - a. The water use beyond the assembly is for irrigation purposes only;
 - b. The PVB is installed in accordance with the manufacturer’s specifications;
 - c. The irrigation system is designed and constructed to be incapable of inducing backpressure; and
 - d. Chemigation, the injection of chemical pesticides and fertilizers, is not used or provided in the irrigation system.
- (6) Each backflow-prevention assembly required by this Section shall be tested at least annually, or more frequently if directed by the public water system or AS-EPA. Each assembly shall also be tested after installation, relocation, or repair. An assembly shall not be placed in service unless it has been tested and demonstrated to be functioning as designed. The following provisions shall apply to the testing of backflow-prevention assemblies:
 - (a) Testing shall be in accordance with procedures described in Section 9 of the Manual of Cross-Connection Control. The public water system shall notify the water user when testing of backflow-prevention assemblies is needed. The notice shall specify the date by which the testing must be completed and the results forwarded to the public water system.
 - (b) Testing shall be performed by a person who is currently certified as a “general” tester by the California-Nevada Section of the American Water Works Association (CA-NV Section, AWWA), the US State Environmental Technical Training (ASETT) Center, the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research, or other certifying authority accepted by AS-EPA.
 - (c) When a backflow-prevention assembly is tested and found to be defective, it shall be repaired or replaced in accordance with the provisions of this Section.
- (7) A public water system shall maintain records of backflow-prevention assembly installations and tests performed on backflow-prevention assemblies in its service area. Records shall be retained by the public water system for at least three years and shall be made available for review by AS-EPA upon request. These records shall include an inventory of backflow-prevention assemblies required by this Section and, for each assembly, all of the following information:
 - (a) Assembly identification number and description,
 - (b) Location,
 - (c) Date of tests,
 - (d) Description of repairs and recommendations for repairs made by the tester, and
 - (e) The tester’s name and certificate number.

- (8) A public water system shall submit a written cross-connection incident report to AS-EPA and the public health authority within five business days after a cross-connection problem occurs that results in contamination of the public water system. The report shall address all of the following:
 - (a) Date and time of discovery of the unprotected cross-connection;
 - (b) Nature of the cross-connection problem;
 - (c) Affected area;
 - (d) Cause of the cross-connection problem;
 - (e) Public health impact;
 - (f) Date and text of any public health advisory issued;
 - (g) Each corrective action taken; and
 - (h) Date of completion of each corrective action.
- (9) An individual with direct responsibility for implementing a backflow prevention program for a water system serving more than 50,000 persons, or if AS-EPA has determined that such a need exists, shall be licensed as a “cross-connection control program specialist” by the CA-NV Section, AWWA or other certifying authority accepted by AS-EPA.
 - (d) Contamination of water in the distribution system from backflow;
 - (e) Collapse of a reservoir, reservoir roof, or pumphouse structure;
 - (f) A break in a transmission or distribution line; and
 - (g) Chemical or microbiological contamination of the water supply.
- (2) The emergency operations plan required by subsection (1) shall address all of the following:
 - (a) Provision of alternate sources of water during the emergency;
 - (b) Notice procedures for regulatory agencies, news media, and users;
 - (c) Disinfection and testing of the distribution system once service is restored;
 - (d) Identification of critical system components that shall remain in service or be returned to service quickly;
 - (e) Critical spare parts inventory;
 - (f) Staff training in emergency response procedures; and
 - (g) Coordination with AS-EPA and other emergency preparedness agencies in American Samoa.

History: Rule 1-08, eff 1 Jun 08.

History: Rule 1-08, eff 1 Jun 08.

25.0406 Emergency Operations Plan

- (1) The water supplier for a public water system shall develop and keep emergency operations plan in an easily accessible location. At a minimum, the emergency operations plan shall detail the steps that the public water system will take to assure continuation of service in the following emergency situations:
 - (a) Loss of a source;
 - (b) Loss of water supply due to major component failure;
 - (c) Damage to power supply equipment or loss of power;

25.0407 Unsafe Supplies

AS-EPA may order a public water system to disconnect a source to protect the public health from an acute health risk that is attributable to the source. An acute health risk is posed when one of the following occurs:

- (1) A recurring presence of total coliform and fecal coliform or E. coli that is attributable to the source,
- (2) a violation of the MCL for nitrate or nitrite that is attributable to the source, or
- (3) an occurrence of a waterborne disease outbreak that is attributable to the source.

History: Rule 1-08, eff 1 Jun 08.

25.0408 Sanitary Surveys

- (1) Each public water system shall undergo a sanitary survey at least every two years. A sanitary survey shall be conducted on a scheduled basis, when AS-EPA determines that a public water system is not in compliance with this Chapter or when AS-EPA determines that a public water system poses a threat to public health because of defective design, lack of treatment, inadequacy of the source, poor maintenance, inadequate records, ineffective operation, or that the water is unsatisfactory for use. A public water system shall make necessary alterations or additions in the design or construction of equipment and such changes in the operation of the public water system as necessary to comply with requirements of this Chapter and within the time limits set by AS-EPA.
- (2) A sanitary survey of a public water system shall be made by a representative of AS-EPA, USEPA or a registered professional engineer or registered sanitarian who is registered in the United States and accepted by AS-EPA.

History: Rule 1-08, eff 1 Jun 08.

25.0409 Hauled Water

- (1) All hauled water for delivery to a public water system shall be obtained from a source that is a regulated public water system.
- (2) Materials or products which come into contact with the water shall comply with 25.0403.4.
- (3) Roof hatches on water transport containers shall be fitted with a watertight cover.
- (4) A bottom drain valve or other provisions to allow complete drainage and cleaning of a water transport container shall be provided.
- (5) Hoses which are used to deliver drinking water shall be equipped with a cap and shall remain capped when not in use.
- (6) A water hauler shall, at all times, maintain a free chlorine residual of 0.2 mg/l to 1.0 mg/l in the water that is hauled in a water transport container. A chlorine disinfectant shall be added

at the time water is loaded into the container. The free chlorine residual shall be measured each time water is off-loaded from the container. The water hauler shall maintain a log of all on-loading, chlorine disinfectant additions, and free chlorine residual measurements. Such records shall be maintained for at least three years and be made available to AS-EPA for review upon request.

- (7) A water transport container shall be for hauling drinking water only. The container shall be plainly and conspicuously labeled “For Drinking Water Use Only.”
- (8) A water transport container shall be thoroughly disinfected prior to being put into service. Disinfection must be performed in accordance with AWWA storage tank disinfection procedures or other method accepted by AS-EPA. A total coliform bacteria sample must be analyzed to verify proper disinfection. Chlorinated water from the disinfection procedure shall not be discharged into or adjacent to a stream or other water body.

History: Rule 1-08, eff 1 Jun 08.

25.041 Bottling Water for Sale

- (1) All water that is bottled in American Samoa for retail purposes must use an AS-EPA approved Public Water System as the source for the water being bottled.
- (2) Bottled water processing operations shall include the application of an AS-EPA approved, residual producing disinfectant such as ozone (O₃), chlorine (Cl), etc. to the product water flowstream.
 - (a) Residual Disinfectant Concentrations (RDCs) shall be detectable at fill taps during all bottling operations.
 - (b) RDCs at the bottle filling station shall also be detectable during AS-EPA sampling efforts.
- (3) Ultra-violet (UV) irradiation of product water may be utilized upstream of the chemical disinfection process.

(4) If UV is not utilized, RDCs shall be determined with an AS-EPA approved test method/instrument.

(a) At the start of each water production day RDCs must be recorded.

(b) A copy of the daily RDC values must be provided for review to AS-EPA on a monthly basis.

(c) RDCs may be recorded and submitted on AS-EPA Form RDC as provided by the AS-EPA Water Program.

(d) Records of oxidant residual values must be kept on file for two years from the end of the recording month.

History: Rule 1-08, eff 1 Jun 08.

25.0411 Violation - Penalty

Any person who violates any provision of this chapter shall, upon conviction, be subject to the applicable penalties provided under A.S.C.A. § 25.3010.

History: Rule 1-08, eff 1 Jun 08.

25.0420.1 Authority

This chapter establishes territorial primary drinking water standards regulations pursuant to Section 1412 of the Public Health Service Act, as amended by the Safe Drinking Water Act (Public Laws 93-523, 95-190, 96-63, and 96-502), and A.S.C.A. Title 25, Chapter 30.

History: Rule 1-08, eff 1 Jun 08.

25.0420.100 Criteria and Procedures for Public Water Systems Using Point-of-Entry Devices

The provisions of 40 Code of Federal Regulations § 141.100 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.101 Use of Bottled Water

The provisions of 40 Code of Federal Regulations § 141.101 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.11 Maximum Containment Levels for Inorganic Chemicals

The provisions of 40 Code of Federal Regulations § 141.11 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.110 General Requirement

The provisions of 40 Code of Federal Regulations § 141.110 as revised and codified of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.111 Treatment Techniques for Acrylamide and Epichlorohydrin

The provisions of 40 Code of Federal Regulations § 141.111 as revised and codified July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.12 Maximum Containment Levels for Total Trihalomethanes

The provisions of 40 Code of Federal Regulations § 141.12 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.130 Maximum Containment Levels for Turbidity

The provisions of 40 Code of Federal Regulations § 141.13, as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.130 General Requirements

The provisions of 40 Code of Federal Regulations § 141.130 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.131 Analytical Requirements

The provisions of 40 Code of Federal Regulations § 141.131 as revise and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.132 Monitoring Requirements

The provisions of 40 Code of Federal Regulations § 141.132 as revised and codified as if July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.133 Compliance Requirements

The provisions of 40 Code of Federal Regulations § 141.133 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.134 Reporting and Record Keeping Requirements

The provisions of 40 Code of Federal Regulations § 141.134 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.135 Treatment Technique for Control of Disinfection Byproducts (DBP) Precursors

The provisions of 40 Code of Federal Regulations § 141.135 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.15 Maximum Contaminant Levels for Radium-226, Radium-228, and Gross Alpha Particle Radioactivity in Community Water Systems.

The provisions of 40 Code of Federal Regulations § 141.15 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.151 Purpose and Applicability of this Subpart.

The provisions of 40 Code of Federal Regulations § 141.151 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.152 Effective Dates.

The provisions of 40 Code of Federal Regulations § 141.152 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.153 Content of the Reports.

The provisions of 40 Code of Federal Regulations § 141.153 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.154 Required Additional Health Information.

The provisions of 40 Code of Federal Regulations § 141.154 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08

25.0420.155 Report Delivery and Record Keeping

The provisions of 40 Code of Federal Regulations § 141.155 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.16 Maximum Contaminant Levels for Beta Particle and Photon Radioactivity from Man-made Radionuclides in Community Water Systems.

The provisions of 40 Code of Federal Regulations § 141.16 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.170 General Requirements.

The provisions of 40 Code of Federal Regulations § 141.170 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.171 Criteria for Avoiding Filtration.

The provisions of 40 Code of Federal Regulations § 141.171 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.172 Disinfection Profiling and Benchmarking.

The provisions of 40 Code of Federal Regulations § 141.172 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.173 Filtration.

The provisions of 40 Code of Federal Regulations § 141.172 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.174 Filtration Sampling Requirements.

The provisions of 40 Code of Federal Regulations § 141.172 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.175 Reporting and Record Keeping Requirements.

The provisions of 40 Code of Federal Regulations § 141.172 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.200 Definitions.

Except as provided below, the provisions of 40 Code of Federal Regulations § 141.2 as revised and codified as of July 1, 2002 are hereby adopted by reference. The words and terms defined in the American Samoa Safe Drinking Water Act, Title 25, Chapter 30 A.S.C.A. have the meanings ascribed to them therein. In addition, as used in these regulations:

- (1) “AS-EPA” means the American Samoa Environmental Protection Agency
- (2) “Director of AS-EPA” means both the Director of AS-EPA and the executive secretary of the Environmental Quality Commission.

History: Rule 1-08, eff 1 Jun 08.

25.0420.201 General Public Notification Requirements.

The provisions of 40 Code of Federal Regulations § 141.201 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.202 Tier 1 Public Notice – Form, Manner, and Frequency of Notice.

The provisions of 40 Code of Federal Regulations § 141.202 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.203 Tier 2 Public Notice – Form, Manner, and Frequency of Notice.

The provisions of 40 Code of Federal Regulations § 141.203 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.204 Tier 3 Public Notice – Form, Manner, and Frequency of Notice.

The provisions of 40 Code of Federal Regulations § 141.204 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.205 Content of the Public Notice.

The provisions of 40 Code of Federal Regulations § 141.205 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.206 Notice to New Billing Units or New Customers.

The provisions of 40 Code of Federal Regulations § 141.206 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.207 Special Notice of the Availability of Unregulated Contaminant Monitoring Results.

The provisions of 40 Code of Federal Regulations § 141.207 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.208 Special Notice for Exceedance of the SMCL for Fluoride.

The provisions of 40 Code of Federal Regulations § 141.208 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.209 Special Notice for Nitrate Exceedances Above MCL by Non-community Water Systems (NCWS), Where Granted Permission by the Primacy Agency Under 141.11(d).

The provisions of 40 Code of Federal Regulations § 141.209 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.21 Coliform Sampling.

The provisions of 40 Code of Federal Regulations § 141.21 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.210 Notice by Primacy Agency on Behalf of the Public Water System.

The provisions of 40 Code of Federal Regulations § 141.210 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.22 Turbidity Sampling and Analytical Requirements.

The provisions of 40 Code of Federal Regulations § 141.22 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.23 Inorganic Chemical Sampling Analytical Requirements.

The provisions of 40 Code of Federal Regulations § 141.23 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.24 Organic Chemicals Sampling and Analytical Requirements.

The provisions of 40 Code of Federal Regulations § 141.24 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.25 Analytical Methods for Radioactivity.

The provisions of 40 Code of Federal Regulations § 141.25 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.26 Monitoring Frequency for Radioactivity in Community Water Systems.

The provisions of 40 Code of Federal Regulations § 141.26 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.27 Alternate Analytical Techniques.

The provisions of 40 Code of Federal Regulations § 141.27 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.28 Certified Laboratories.

The provisions of 40 Code of Federal Regulations § 141.28 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.29 Monitoring of Consecutive Public Water Systems.

The provisions of 40 Code of Federal Regulations § 141.29 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.3 Coverage.

These regulations shall apply to each public water system (PWS), unless the PWS meets all of the following conditions:

- (1) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
- (2) Obtains all of its water from, but is not owned by, a public water system to which such regulations apply;
- (3) Does not sell water to any person; and

- (4) Is not a carrier which conveys passengers in interstate commerce.

History: Rule 1-08, eff 1 Jun 08.

25.0420.30 Total Trihalomethanes Sampling, Analytical and Other Requirements.

The provisions of 40 Code of Federal Regulations § 141.30 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.31 Reporting Requirements.

Except as expanded below, the provisions of 40 Code of Federal Regulations § 141.31 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.32 Public Notification.

Refer to sections 25.0601.201-25.0601.210 of these regulations for public notification requirements.

History: Rule 1-08, eff 1 Jun 08.

25.0420.33 Record Maintenance.

The provisions of 40 Code of Federal Regulations § 141.33 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.34 Reporting and Public Notification for Certain Unregulated Contaminants.

The provisions of 40 Code of Federal Regulations § 141.35 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.4 Variances and Exemptions.

AS-EPA removed the provisions relating to Variances and Exemptions from the American Samoa Safe Drinking Water Regulations, Title 25, Chapter 04.

History: Rule 1-08, eff 1 Jun 08.

25.0420.40 Monitoring Requirements for Unregulated Contaminants.

Public water systems must comply with provisions of 40 Code of Federal Regulations § 141.40. However, AS-EPA is not adopting 40 Code of Federal Regulations § 141.40 by reference because the Federal EPA enforces this regulation in coordination with AS-EPA.

History: Rule 1-08, eff 1 Jun 08.

25.0420.41 Special Monitoring for Sodium.

The provisions of 40 Code of Federal Regulations § 141.41 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.42 Special Monitoring for Corrosivity Characteristics.

The provisions of 40 Code of Federal Regulations § 141.42 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.43 Prohibition on Use of Lead Pipes, Solder, and Flux.

The provisions of 40 Code of Federal Regulations § 141.43 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.5 Siting Requirements and Plan Review

The provisions of 40 Code of Federal Regulations § 141.5 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.50 Maximum Contaminant Level Goals for Organic Contaminants.

The provisions of 40 Code of Federal Regulations § 141.50 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.501 Who is subject to the requirements of subpart T?

The provisions of 40 Code of Federal Regulations § 141.501 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.502 When must my system comply with these requirements?

The provisions of 40 Code of Federal Regulations § 141.502 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.503 What does subpart T require?

The provisions of 40 Code of Federal Regulations § 141.503 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.51 Maximum Contaminant Level Goals for Inorganic Contaminants.

The provisions of 40 Code of Federal Regulations § 141.51 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.510 Is my system subject to the new finished water reservoir requirements?

The provisions of 40 Code of Federal Regulations § 141.510 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.511 What is required of new finished water reservoirs?

The provisions of 40 Code of Federal Regulations § 141.511 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.52 Maximum Contaminant Level Goals for Microbiological Contaminants.

The provisions of 40 Code of Federal Regulations § 141.52 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.520 Is my system subject to the updated watershed control requirements?

The provisions of 40 Code of Federal Regulations § 141.520 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.521 What updated watershed control requirements must my unfiltered system implement to continue to avoid filtration?

The provisions of 40 Code of Federal Regulations § 141.521 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.522 How does the State determine whether my system's watershed control requirements are adequate?

The provisions of 40 Code of Federal Regulations § 141.522 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.53 Maximum Contaminant Level Goals for Disinfection Byproducts.

The provisions of 40 Code of Federal Regulations § 141.53 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.530 What is a disinfection profile and who must develop one?

The provisions of 40 Code of Federal Regulations § 141.530 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.531 What criteria must a State use to determine that a profile is unnecessary?

The provisions of 40 Code of Federal Regulations § 141.531 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.532 How does my system develop a disinfection profile and when must it begin?

The provisions of 40 Code of Federal Regulations § 141.532 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.533 What data must my system collect to calculate a disinfection profile?

The provisions of 40 Code of Federal Regulations § 141.533 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.534 How does my system use this data to calculate an inactivation ratio?

The provisions of 40 Code of Federal Regulations § 141.534 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.535 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?

The provisions of 40 Code of Federal Regulations § 141.535 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.536 My system has developed an inactivation ratio; what must we do now?

The provisions of 40 Code of Federal Regulations § 141.536 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.54 Maximum Residual Disinfectant Level Goals for Disinfectants.

The provisions of 40 Code of Federal Regulations § 141.54 as July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.540 Who has to develop a disinfection benchmark?

The provisions of 40 Code of Federal Regulations § 141.540 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.541 What are significant changes to disinfection practice?

The provisions of 40 Code of Federal Regulations § 141.541 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.542 What must my system do if we are considering a significant change to disinfection practices?

The provisions of 40 Code of Federal Regulations § 141.542 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.543 How is the disinfection benchmark calculated?

The provisions of 40 Code of Federal Regulations § 141.543 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.544 What if my system uses chloramines, ozone, or chlorine dioxide for primary disinfection?

The provisions of 40 Code of Federal Regulations § 141.544 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.550 Is my system required to meet subpart T combined filter effluent turbidity limits?

The provisions of 40 Code of Federal Regulations § 141.550 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.551 What strengthened combined filter effluent turbidity limits must my system meet?

The provisions of 40 Code of Federal Regulations § 141.551 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.552 My system consists of “alternative filtration” and is required to conduct a demonstration—what is required of my system and how does the State establish my turbidity limits?

The provisions of 40 Code of Federal Regulations § 141.552 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.553 My system practices lime softening—is there any special provision regarding my combined filter effluent?

The provisions of 40 Code of Federal Regulations § 141.553 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.560 Is my system subject to individual filter turbidity requirements?

The provisions of 40 Code of Federal Regulations § 141.560 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.561 What happens if my system’s turbidity monitoring equipment fails?

The provisions of 40 Code of Federal Regulations § 141.561 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.562 My system only has two or fewer filters—is there any special provision regarding individual filter turbidity monitoring?

The provisions of 40 Code of Federal Regulations § 141.562 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.563 What follow-up action is my system required to take based on continuous turbidity monitoring?

The provisions of 40 Code of Federal Regulations § 141.563 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.564 My system practices lime softening—is there any special provision regarding my individual filter turbidity monitoring?

The provisions of 40 Code of Federal Regulations § 141.564 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.570 What does subpart T require that my system report to the State?

The provisions of 40 Code of Federal Regulations § 141.570 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.571 What records does subpart T require my system to keep?

The provisions of 40 Code of Federal Regulations § 141.571 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.6 Effective Dates.

The provisions of 40 Code of Federal Regulations § 141.6 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.60 Effective Dates.

The provisions of 40 Code of Federal Regulations § 141.60 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.61 Maximum Contaminant Levels for Organic Contaminants.

The provisions of 40 Code of Federal Regulations § 141.61 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.62 Maximum Contaminant Levels for Inorganic Contaminants.

The provisions of 40 Code of Federal Regulations § 141.62 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.63 Maximum Contaminant Levels (MCLs) for Microbiological Contaminants.

The provisions of 40 Code of Federal Regulations § 141.63 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.64 Maximum Contaminant Levels for Disinfection Byproducts.

The provisions of 40 Code of Federal Regulations § 141.64 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.65 Maximum Residual Disinfectant Levels.

The provisions of 40 Code of Federal Regulations § 141.65 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.70 General Requirements.

The provisions of 40 Code of Federal Regulations § 141.70 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.71 Criteria for Avoiding Filtration.

The provisions of 40 Code of Federal Regulations § 141.71 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.72 Disinfection.

The provisions of 40 Code of Federal Regulations § 141.72 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.73 Filtration.

The provisions of 40 Code of Federal Regulations § 141.73 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.74 Analytical and Monitoring Requirements.

The provisions of 40 Code of Federal Regulations § 141.74 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.75 Reporting and Record Keeping Requirements.

The provisions of 40 Code of Federal Regulations § 141.75 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.80 General Requirements.

The provisions of 40 Code of Federal Regulations § 141.80 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.81 Applicability of Corrosion Control Treatment Steps to Small, Medium-size and Large Water Systems.

The provisions of 40 Code of Federal Regulations § 141.81 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.82 Description of Corrosion Control Treatment Requirements.

The provisions of 40 Code of Federal Regulations § 141.82 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.83 Source Water Treatment Requirements.

The provisions of 40 Code of Federal Regulations §141.83 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.84 Lead Service Line Replacement Requirements

The provisions of 40 Code of Federal Regulations §141.84 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.85 Public Education and Supplemental Monitoring Requirements.

The provisions of 40 Code of Federal Regulations § 141.85 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.86 Monitoring Requirements for Lead and Copper in Tap Water.

The provisions of 40 Code of Federal Regulations § 141.86 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.87 Monitoring Requirements for Water Quality Parameters.

The provisions of 40 Code of Federal Regulations §141.87 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.88 Monitoring Requirements for Lead and Copper in Source Water.

The provisions of 40 Code of Federal Regulations §141.88 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.89 Analytical Methods.

The provisions of 40 Code of Federal Regulations § 141.89 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.90 Reporting Requirements.

The provisions of 40 Code of Federal Regulations § 141.90 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0420.91 Record Keeping Requirements.

The provisions of 40 Code of Federal Regulations § 141.91 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0430.1 Entry and Inspection

Whether or not AS-EPA has evidence that a public water system has violated an applicable legal requirement, upon the presentation of his credentials the Director or his authorized representative shall have the right, at all reasonable times, to:

- (1) Enter premises on which any public water system is located.
- (2) Inspect any equipment, operation, or sampling or any public water system;
- (3) Take water samples from any public water system; and
- (4) Have access to and copy any record required to be kept pursuant to these regulations.

AS-EPA may enter into cooperative agreements with Federal Agencies to assure the implementation of this section on Federal Facilities.

History: Rule 1-08, eff 1 Jun 08.

25.0430.2 Appeal

Persons aggrieved by actions of the AS-EPA pursuant to these regulations may file an appeal in the High Court, appellate division, in accordance with the American Samoa Administrative Procedures Act, 4.1001 et seq. A.S.C.A.

History: Rule 1-08, eff 1 Jun 08.

25.0430.3 Conflicts with Standards and Regulations.

In the event any previously adopted territorial rules or regulations conflict with the provisions of the Standards and Regulations set forth in this chapter, the provisions of this chapter shall apply.

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History: Rule 1-08, eff 1 Jun 08.

25.0430.4 Severability Clause

If any provision of these regulations, or its application to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of these regulations, shall not be affected thereby.

History: Rule 1-08, eff 1 Jun 08.

25.0440.1 Purpose.

The provisions 40 Code of Federal Regulations § 143.1 as revised and codified as of July 1, 2002 are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0440.2 Definitions.

The provisions 40 Code of Federal Regulations §143.2 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0440.3 Secondary Maximum Contaminant Levels.

The provisions 40 Code of Federal Regulations § 143.3 as revised and codified as of July 1, 2002, are hereby adopted by reference.

History: Rule 1-08, eff 1 Jun 08.

25.0440.4 Monitoring

- (1) The parameters in these regulations shall be monitored at intervals no less frequent than the monitoring performed for inorganic chemical contaminants listed in the National Interim Primary Drinking Water Regulations as applicable to community water systems. More frequent monitoring may be appropriate for specific parameters such as pH, color, odor or others under certain circumstances as directed by AS-EPA.
- (2) Measurement of pH, copper and fluoride to determine compliance under 25.0603.3 may be conducted with one of the methods in 40 Code of Federal Regulations § 141.23(k)(1). Analyses of aluminum, chloride, foaming agents, iron, manganese, odor, silver, sulfate, total dissolved solids (TDS) and zinc to determine compliance under 25.0603.3 may be conducted with the

methods in the following table. Criteria for analyzing aluminum, copper, iron, manganese, silver and zinc samples with digestion or directly without digestion, and other analytical test procedures are contained in Technical Notes on Drinking Water Methods, EPA 600/R 94 173, October 1994, which is available at NTIS PB95 104766.

Contaminant	EPA	ASTM ³	SM ⁴	Other
Aluminum	² 200.7 ² 200.8 ² 200.9		3120B 3113B 3111D	
Chloride	¹ 300.0	D4327 – 91	4110B 4500 – Cl – D 4500 – Cl – D	
Color		D512- 89B	2120B	
Foaming Agents.	² 200.7		5540C	
Iron	² 200.9		3120B 3111B 3113B	
Manganese	² 200.7 ² 200.8 ² 200.9		3120B 3111B 3113B	
Odor	² 200.7		2150B	
Silver	² 200.8 ² 200.9		3120B 3111B 3113B	⁵ I – 3720 -
Sulfate	¹ 300.0 ¹ 375.2	D4327 – 91	4110 4500 – SO42 – F 4500 – SO42 – C,D. 4500 – SO42	
TDS	² 200.7		– E	
Zinc	² 200.8	D-516- 90	2540 C 3120B 3111B	

The procedure shall be performed in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 Code of Federal Regulations part 51. Copies of the documents may be obtained from the sources listed below. Information regarding these documents can be obtained from the Safe Drinking Water Hotline at (800) 426-4791. Document may be inspected at EPA’s Drinking Water Docket, 401 M Street, SW, Washington DC 20460 (Telephone: 202-260-3027); or at the Office of Federal Register, 800 North Capitol Street, NW Suite 700, Washington D.C. 20408.

1 “Methods for the Determination of Inorganic Substances in Environmental Samples”, EPA-

600/R-93-100, August 1993. Available at NTIS, PB94-121811.

- 2 “Methods for the Determination of Metals in Environmental Samples—Supplement I”, EPA-600/R-94-111, May 1994. Available at NTIS, PB94-184942.
- 3 The procedures shall be done in accordance with the Annual Book of ASTM Standards, 1994, Vols. 11.01 and 11.02, American Society for Testing and Materials. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 Code of Federal Regulations Part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at EPA’s Drinking Water Docket, 401 M Street, S.W., Washington D.C. 20460; or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington D.C.
- 4 The procedures shall be done in accordance with the 18th edition of Standard Methods for the Examination of Water and Wastewater, 1992, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 Code of Federal Regulations Part 51. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street N.W., Washington DC 20005. Copies may be inspected at EPA’s Drinking Water Docket, 401 M Street, S.W., Washington DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington DC.
- 5 Available from Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225-0425.

History: Rule 1-08, eff 1 Jun 08.

25.0450.1 Suitability Determination

If any publication adopted by reference under this chapter Part 25.0420 is revised, the Director of AS-EPA may review the revision to determine its suitability for this Territory. If the Director of AS-EPA determines that the revision is not suitable, the

Director shall hold a public hearing within 30 days of making his determination. If, after the hearing, the Director of AS-EPA does not revise his determination, he shall give notice that the revision is not suitable for the Territory within thirty (30) days of the hearing. If the Director does not give such notice, the revision becomes part of the publication adopted by reference pursuant to this chapter, Part 25.0420.

History: Rule 1-08, eff 1 Jun 08.

25.0460.1 Establishment of fee:

- (A) The AS-EPA Water Quality Laboratory shall establish a set of fees for services provided to private enterprises and government organizations.
- (B) The lab fee rates shall be calculated on an annual basis and may include the following criteria:
 1. Cost of labor,
 2. Cost of electricity and other utilities,
 3. Cost of materials used,
 4. Cost of transportation,
 5. Facility maintenance and operation,
 6. Other applicable service fees.
- (C) Fees may be less than or equal to the calculated cost but in no case shall the fees charged exceed the actual amount required to perform the service provided.

History: Rule 1-08, eff 1 Jun 08.

25.0460.2 Public Notice of fees:

- (A) When new fees are to be introduced, they shall be published in the government newspaper as well as at least one local printed news publication for at least 5 consecutive days. A breakdown of the calculation used to establish the rates shall be available for public inspection at the offices of AS-EPA.
- (B) Laboratory fees shall be posted in a conspicuous place within AS-EPA and be available to the public upon request.

History: Rule 1-08, eff 1 Jun 08.

25.0460.3 Samples accepted and charged:

- (A) No samples will be accepted without prior approval from the AS-EPA Director, and only those samples delivered in laboratory approved containers will be accepted and analyzed by the laboratory. The AS-EPA laboratory has the right to refuse service to anyone and is not obligated to provide laboratory services to anyone.
- (B) The AS-EPA Water Quality Laboratory may charge fees for any additional sample(s) required beyond the initial sample(s) needed to establish compliance with AS-EPA or ASDOH rules or regulations.
- (C) The AS-EPA Water Quality Laboratory may charge fees for any sample requested to be analyzed by the public or by governmental agencies, departments or entities.

History: Rule 1-08, eff 1 Jun 08.

25.0460.4 Payment of Lab Fees:

- (A) AS-EPA’s administrative staff shall have the authority to collect the laboratory fees and deposit the same into an account with the Department of Treasury labeled “AS-EPA Water Quality Lab Fee Fund” for the use of running the AS- EPA Water Quality Laboratory.
- (B) Payment of fees shall be made in the form of money order at the time lab services are requested and shall be made at the main office of AS-EPA. All money orders shall be made out to “AS-EPA”.

History: Rule 1-08, eff 1 Jun 08.

25.0460.5 Creation of Lab Fee Fund Account:

- (A) There shall be created within the Department of Treasury under the AS-EPA Cost Center a sub-account labeled “AS-EPA Water Quality Lab Fee Fund” for the receipt of all funds received by the AS-EPA Water Quality Lab.
- (B) All funds collected or received into the AS-EPA Water Quality Lab Fee Fund shall be used solely by AS-EPA for the direct and indirect costs of administration and implementation of the AS-EPA Water Quality Lab for providing staff and resources to provide water quality laboratory

services to private enterprises and government organizations.

- (C) AS-EPA shall maintain independent records and accounts of all revenues and expenditures of the AS-EPA Water Quality Lab Fee Fund.

History: Rule 1-08, eff 1 Jun 08.

TITLE 25 – CHAPTER 05 – SOLID WASTE

Sections:

- 25.0501 Definitions.
- 25.0502 Collection of solid waste.
- 25.0504 Limitations to collection by solid waste crews.
- 25.0505 Disturbance of receptacles.
- 25.0506 Solid waste acceptable and unacceptable by disposal facilities.
- 25.0507 Dead animals.
- 25.0508 Unlawful placement of special wastes.
- 25.0509 Dumping of solid waste prohibited.
- 25.0510 Disposal facilities site management plans.
- 25.0521 Licenses required to collect solid waste.
- 25.0522 Issuance of solid waste collection licenses.
- 25.0523 Conditions of solid waste collection licenses.
- 25.0531 Businesses and institutions.
- 25.0532 Private residences.
- 25.0533 Public facilities.
- 25.0534 Solid waste hauled by any person other than a licensed collector.
- 25.0544 Disposal charges.
- 25.0545 Charges for dead animals.
- 25.0546 Deposits of fees and charges.
- 25.0551 Criminal penalty.
- 25.0552 Revocation or suspension of solid waste collection license.
- 25.0553 Bond enforcement.

25.0501 Definitions.

As used in this chapter, the words in this section shall have the following meanings unless the context otherwise requires:

- (a) “Bins” means a receptacle capable of containing 3 or more cubic yards of solid waste and designed for mechanical handling.

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- (b) “Business” means any individual proprietorship, partnership, corporation, association, joint venture or other project which carries on commercial or industrial activity for gain or profit, including but not limited to any motel, hotel or apartment, and cannery.
- (c) “Construction and demolition waste” means all soil, rock, construction debris, demolition debris and all similar materials generated by construction and demolition projects.
- (d) “Department” means the department of public works of the government.
- (e) “Director” means the director of public works.
- (f) “Disposal facilities” means all landfills, baling stations, transfer stations, recycling plants, composts, shredding stations and incinerators operated or regulated by the government.
- (g) “Executive secretary” means the executive secretary of the environmental quality commission of the government.
- (h) “Government” means the American Samoa Government.
- (i) “Hazardous waste” means a substance defined as hazardous waste under United States regulations, 40 CFR 261.3, and other United States laws and regulations. Hazardous waste is excluded from any other definitions of waste in this section for purposes of these rules and shall be handled, stored, disposed or otherwise processed solely in accordance with applicable federal and other territorial laws and rules or regulations.
- (j) “Incinerator” means any apparatus owned or regulated by the government where solid waste is treated by a method of burning.
- (k) “Industrial waste” means waste generated by industrial processes and manufacturing;
- (l) “Infectious waste” means all equipment, utensils of disposable nature used to treat patients with communicable disease, all laboratory wastes, all surgical room waste containing pathological specimens and similar matter.
- (m) “Institution” means any individual proprietorship, partnership, corporation, association, joint venture or other project which carries on nonprofit activities.
- (n) “Licensed collector” means and includes any person who has been licensed by the government to collect solid waste.
- (o) “Licensed operator” means any person who has been licensed by the government to operate disposal facilities.
- (p) “Motel, hotel or apartment” means an establishment which has 2 or more dwelling units and has been licensed by the government to provide lodging for hire.
- (q) “Owner” means the occupant of a dwelling unit or place of business or institution; provided, however, that if said dwelling unit or place of business or institution is rented to any such occupant, then the term “owner” means the person to whom the rent is payable.
- (r) “Person” means any individual, corporation, partnership, firm, association, trust estate, owner, business, institution, public agency, or political subdivision.
- (s) “Solid waste” means:
 - (1) “garbage” which consists of putrescible animal and vegetable wastes and all organic wastes resulting from the handling, preparation, cooking, serving and consumption of food;
 - (2) “rubbish” which consists of non-putrescible wastes and including such materials as paper, cardboard, yard trimmings, clothes, shoes, and non-combustible such as bottles; cans, china, glass, and any other material of similar character; and
 - (3) “special waste” which consists of:
 - (A) bulky wastes such as lumber, scrap iron pipes, tree branches over 2 inches in diameter, refrigerators, stoves, radios, television sets, phonographs, bedsteads, bed spring tables, sofas, chairs, water heaters, sinks and other

similar materials or equipment of a weighty or bulky nature; and

- (B) mineral wastes such as slag, Tailings, rubble and other similar materials usually found around or resulting from mining, dredging or similar operations.

- (t) “Treasurer” means the treasurer of the government.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0502 Collection of solid waste.

- (a) The department shall have charge of and shall administer the collection and disposal of solid waste. No solid waste shall be collected by the department or a licensed collector from any building or place when:

- (1) the owner thereof has made provision for solid waste collection by his own vehicles, except for solid waste prepared and placed in accordance with 25.0503;
- (2) the owner thereof has installed or provided the premises an incinerator or other solid waste disposal facilities which have been approved by the director of health and executive secretary as conforming to the provisions of law relating to nuisances and sanitary rules and in compliance with environmental rules established to achieve and maintain high levels of air, surface water and ground water qualities.

- (b) The director shall approve schedules and work hours for solid waste collection submitted by licensed collectors. The licensed collectors shall keep the public informed on the current schedule and work hours, and each licensed collector to whom they are applicable shall comply with them. The director shall make arrangements with licensed collectors and businesses to meet collection needs for special events, e.g. Flag Day and other holidays.

- (c) Any solid waste collected by the department or licensed collectors and accepted at government-operated disposal facilities shall become the property of the government. Upon closure of the disposal facility or any portion thereof, the solid

waste at the disposal facility shall become the property of the landowner.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0503 Preparation and placing of solid waste by owner.

- (a) The types of solid waste hereinafter described shall be prepared for collection as follows:

- (1) All empty cardboard and other fibrous cartons, wooden boxes and crates and other similar empty containers shall be flattened and securely tied in bundles not exceeding 3 feet in length nor weighing more than 75 pounds each.

- (2) All other solid waste except special wastes and infectious wastes shall be placed in bins or in durable or nondurable containers described as follows:

- (A) Durable containers. 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 20 gallons but not more than 55 gallons. The maximum weight of an empty container shall be 50 pounds. The maximum weight of a filled container shall be 110 pounds.

- (B) Non-durable containers. Nondurable containers made of plastic film, paper or cardboard may be used if such containers are able to contain their contents securely at all times. The maximum weight for filled non-durable containers shall be 75 pounds. Such containers shall be collected together with their contents.

- (3) All solid waste consisting of ashes, powders, dust, sawdust, broken bottles, glass or china or other materials likely to cause injury to persons collecting the same shall be securely wrapped or contained before being placed in the container.

- (4) Garbage shall be drained and securely wrapped before being placed in the container.

(b) On or the evening before the scheduled day of collection, all solid waste prepared for collection pursuant to subsection (a) shall be placed within the sidewalk area, which is defined as the area located between the curb or, in the absence of a curb, the edge of the asphalt pavement and the property line boundary of the public roadway in a location readily accessible to the collector. Solid waste may be placed for collection within the sidewalk area of private roads and nonstandard private roadways when all of the following conditions are met:

- (1) all of the residents along the roadway shall want such collections;
- (2) the roadway shall serve at least 5 residences;
- (3) the roadway shall have an unobstructed width of at least 22 feet not including parking lanes;
- (4) horizontal and vertical curves of the roadway shall meet government public works standards;
- (5) maximum roadway grade shall not exceed 19 percent;
- (6) the owners of the roadway shall provide and maintain an all-weather road surface;
- (7) the roadway shall have an adequate turnaround area for the truck unless reversing of the truck is less than a distance of 100 feet;
- (8) reversing on a grade exceeding 10 percent shall not be required;
- (9) Necessary easements and rights-of-way are provided per the requirements of the department.

(c) Special wastes shall be collected on a non-regular basis under procedures determined by the director.

(d) Bins, if used, shall not be placed within the sidewalk area, but shall be placed within the property to be served in locations directly accessible to the pickup forks of the collection truck. Parking of automobiles and other vehicles

is prohibited at all times in front of these bins. The bins will be neatly lettered to indicate “No Parking”. Similarly, other obstruction to the ready access of the collection vehicle to the bin is prohibited. Bins shall be located where overhead power lines, trees, or other overhead obstructions do not hinder collection. Access roadway requirements for the collection of bins shall be that required for collection on private roads and nonstandard private roadways as provided in subsection (b), except that maximum roadway grade shall not exceed 12 percent.

(e) The owner shall be responsible for the cost of bins and containers. Bins and durable containers shall be available for sale or lease at places and prices set by the director in accordance with 25.2005(b) ASCA.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0504 Limitations to collection by solid waste crews.

(a) The department or a licensed collector will not collect

(1) Any soil, rock, concrete, explosives, liquids, radioactive materials, construction and demolition solid waste, trees, branches, hedges and plant cuttings, leaves, palm and coconut branches, banana stalks, vines, weeds and other similar materials;

(2) any solid waste not prepared for collection as provided by 25.0503;

(3) any solid waste not placed for collection as provided by 25.0503;

(4) any solid waste placed for collection in a place which is unsafe and hazardous or is likely to cause injury to the persons collecting said solid waste;

(5) any solid waste from any business where the owner thereof shall have failed to pay the service charges hereinafter provided for;

(6) any infectious waste, except as provided in 25.0506(d).

(b) If a licensed collector does not collect solid waste for any of the reasons set forth in

subsection (a), the licensed collector shall provide written notice of the reason for non-collection to the owner and submit a copy thereof to the director.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0505 Disturbance of receptacles.

- (a) No unauthorized person shall:
 - (1) remove or disturb any solid waste receptacle from the place where the same has been placed for collection.
 - (2) collect, or haul away any solid waste receptacle from the place where the same has been placed for collection;
 - (3) use bins or other solid waste containers for other than their intended use;
 - (4) burn materials in any solid waste receptacle used for collection.
- (b) For purposes of this section, authorized persons shall mean:
 - (1) an owner and his employees and agents;
 - (2) department employees during authorized working hours; and
 - (3) a licensed collector and his employees.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0506 Solid waste acceptable and unacceptable by disposal facilities.

- (a) The department or a licensed operator shall accept the following solid waste at all of its disposal facilities: garbage and rubbish.
- (b) The department or a licensed operator shall accept the following types of solid wastes only at specified disposal facilities designated by the director and approved by the director of health and executive secretary:
 - (1) special wastes;
 - (2) industrial wastes; and
 - (3) construction and demolition waste.
- (c) The department or a licensed operator shall not accept deliveries of any solid waste which are

not made during hours of operation as posted at each facility.

- (d) All infectious wastes shall be disposed by incineration. If mechanical problems prohibit incineration, special arrangement should be made with the director to have the wastes buried in an isolated area at government operated disposal facilities.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0507 Dead animals.

- (a) Every owner of dead animals shall remove such animals, or cause the same to be removed, within a reasonable time after death, or before the same shall constitute a nuisance.
- (b) Any person other than the owner who has actual knowledge of a dead animal shall contact the director for the removal of such animal.
- (c) Dead animals weighing up to 70 pounds may be collected and disposed by a licensed collector, provided they are placed in an open area which is accessible to the collector. Such animals will also be accepted at disposal facilities during operating hours.
- (d) Dead animals weighing over 70 pounds will be accepted at disposal facilities during operating hours.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0508 Unlawful placement of special wastes.

No person shall place special wastes upon or at any area authorized for placement of solid waste for collection under 25.0503(b), or upon any public street, road, highway or other public thoroughfare, or any part thereof, or upon or at disposal facilities which have not been designated by the director for the disposal of special wastes.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0509 Dumping of solid waste prohibited.

No person shall dump or dispose of any solid waste upon any public or private premises, including any water course or drainage facility, except upon or at disposal facilities.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0510 Disposal facilities site management plans.

The director shall establish and administer a comprehensive disposal facility site management plan for each disposal facility designated by the director of health. Each plan shall be provided to the licensed operator of the disposal facility to which it applies, and a public information program on its contents shall be conducted.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0521 Licenses required to collect solid waste.

No person shall engage in any business which involves the collecting of any solid waste from any building or premises other than his own solid waste without first obtaining a solid waste collection license as provided in 25.0522 and a business license as provided in 27.0201 ASCA et seq.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0522 Issuance of solid waste collection licenses.

- (a) Application. Application for a solid waste collection license to engage in the business of solid waste collection shall be made to the director. The applicant shall state thereon his name and business address, the nature of materials to be collected, the manner in which and the location where the same shall be disposed.
- (b) Bond. Every applicant for a license shall execute and submit a security bond in favor of the government in the penal sum of \$100,000, which bond shall be subject to all the conditions set forth in 25.0523, including the cost of collecting and disposing of solid waste by the government in case the licensed collector fails to collect and dispose of solid waste which the licensed collector has contracted to collect and dispose. The bond shall be issued by a security company authorized to do business in American Samoa.
- (c) Vehicular public liability and damage insurance. The applicant shall secure a standard automobile liability insurance policy covering the applicant, or any person driving vehicles to be operated by the applicant with his permission in the amount

of \$100,000 for bodily injury to or for the death of one person in any accident and in the amount of \$300,000 for bodily injury to or for the death of two or more persons in anyone accident respectively, and property damage insurance in the amount of \$50,000 in case of damage to or destruction of property of others in anyone accident. At the time of application, the applicant shall present evidence of such insurance to the director.

- (d) Comprehensive non-vehicular public liability insurance policy. The applicant shall secure a standard comprehensive non-vehicular public liability insurance policy covering the applicant and his employees and agents, which shall also include a rider covering the government, in the sum of \$300,000. Such rider shall be in the form of an endorsement issued by the insurer. At the time of application, the applicant shall present evidence of such insurance to the director.
- (e) Term of licenses. A solid waste collection license shall be issued on a calendar year basis, regardless of when issued and expire on December 31 of the year issued or renewed.
- (f) License fee. The fee for an annual solid waste collection license shall be \$100 payable in advance to the treasurer on or before January 1 of each year. The original fee shall be prorated in the amount of one-fourth of the annual fee for each quarter or portion of a quarter remaining in the year from the date of issuance. No license fee shall be refundable.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0523 Conditions of solid waste collection licenses.

Every solid waste collection license issued under this article shall be subject to the following conditions:

- (a) All vehicles used by the licensed collector for the collection of solid waste shall be so designed and constructed as to prevent the spilling and scattering of its contents upon the public streets. All such vehicles and equipment shall be kept in a clean, inoffensive and sanitary condition. The name of the licensed collector shall be visibly and clearly marked on the left side of all such vehicles in letters not less than 2 inches in height.

Vehicles shall not be loaded in excess of the gross vehicle weight.

- (b) All solid waste shall be handled and transported by the licensed collector in such a manner as to prevent scattering, spilling or leaking of the same and to otherwise avoid committing a nuisance or violation of any law or rule of the government. The licensed collector shall immediately gather up and remove any solid wastes which the licensed collector or any of his employees has scattered, spilled or leaked.
- (c) All solid waste collected by the licensed collector shall be disposed of at a disposal facility designated by the director and approved by the director of health and the executive secretary.
- (d) All vehicles used by the licensed collector for the collection of solid waste and all drivers of such vehicles shall be licensed as provided by law.
- (e) The licensed collector shall not violate any provisions of this chapter or any law relating to the collection and disposal of solid waste within the territory.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0531 Businesses and institutions.

- (a) No person shall operate or maintain a business or institution without arranging or providing for the collection of all solid waste therefrom.
- (b) Where the collection of solid waste is to be made by a licensed collector, the owner or occupant of the business or institution shall prepare and place solid waste for collection in the manner set forth in 25.0503.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0532 Private residences.

Every owner of a private or public dwelling shall prepare and place solid waste for collection by a licensed collector in the manner set forth in 25.0503, unless such owner has made other provisions for solid waste collection or disposal in accordance with 25.0502. In the case of a private or public dwelling occupied by persons other than the owner, the occupant thereof may be made responsible for preparation and placement of refuse pursuant to this

section in place of the owner, if the owner and occupant have so agreed and the licensed collector is notified of this fact in writing. Such notice must be signed by both the owner and occupant.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0533 Public facilities.

A licensed collector shall provide solid waste collection services to buildings of the government and the U.S. Government, including public schools, upon being requested to do so by the authorities responsible for such buildings.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0534 Solid waste hauled by any person other than a licensed collector.

All solid waste hauled to disposal facilities by any person other than a licensed collector shall be handled and transported in such a manner as to prevent scattering, spilling or leaking of the same and to otherwise avoid committing a nuisance or violation of any law or rule of the government. Such person shall immediately gather up and remove any solid waste which such person or any of his employees or agents has scattered, spilled or leaked.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0544 Disposal charges.

- (a) For the receipt and disposal of solid wastes delivered to disposal facilities, the following unit charges shall apply:
 - (1) For garbage and rubbish, \$1 per cubic yard or fraction thereof. The minimum charge per truckload shall be \$3.
 - (2) For derelict vehicles, \$25 each to dispose in disposal facilities approved by the director.
 - (3) For all other special wastes, industrial wastes, and construction and demolition wastes, in such amounts as are approved by the director.
- (b) Except when the licensed operator and licensed collector delivering wastes to a disposal facility owned or leased by the government are the same entity, licensed operators shall issue to each hauler, including licensed collectors of wastes, a written receipt which shall include the type and

quantity of wastes received at the disposal facility and the amount of the disposal charges therefor to be paid to the treasurer and which shall be signed by both the licensed operator and hauler. Licensed operators shall weekly submit copies of all receipts to the treasurer, who shall monthly send invoices to the haulers for amounts shown on the receipts.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0545 Charges for dead animals.

There shall be a \$ 25 charged to the landowner or occupant, payable to the licensed collector or director, for the collection or disposal of dead animals described in 25.0507 from nonpublic property.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0546 Deposits of fees and charges.

All fees and charges collected by the government under this chapter shall be deposited into an earmarked “solid waste collection fund.”

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0551 Criminal penalty.

Any persons violating any provisions of this chapter is guilty of a class C misdemeanor under 25.0110 ASCA and may upon conviction be punished by a fine not exceeding \$300 or imprisonment for a period not exceeding 15 days, or both.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0552 Revocation or suspension of solid waste collection license.

- (a) If a licensed collector; has been convicted, under 25.0110AsCA, the director shall have the power to suspend, for any part of the remaining term of the license, or revoke the solid waste collection license issued to the licensed collector. Suspension and revocation proceedings shall be conducted in compliance with the Administrative Procedure Act, 4.1001 ASCA et seq.
- (b) No solid waste collection license shall be issued to any person whose license has been revoked pursuant to subsection (a) for a period of 2 years after the date of revocation.

History: Rule 10-88, eff 9 Oct 88, § 1.

25.0553 Bond enforcement.

In case of any breach of any condition of any bond issued pursuant to 25.0522(b), the director may enforce the bond.

History: Rule 10-88, eff 9 Oct 88, § 1.

END OF TITLE 25 – ENVIRONMENTAL
HEALTH

TITLE 26 – ENVIRONMENTAL SAFETY AND LAND MANAGEMENT

Chapters:

- 01 Disaster Assistance
- 02 Coastal Management
- 03 Zoning Regulations
- 04 Flood Hazard Protection
- 05 Energy Efficiency

TITLE 26 – CHAPTER 01 – DISASTER ASSISTANCE

Sections:

- 26.0101 Authority.
- 26.0102 Approval and incorporation.
- 26.0103 Force and effect.

Appendix A

26.0101 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 26.0105(b) and 26.0106(e) A.S.C.A.

History: Rule 13-79 (Ex. Ord. 4-1979), eff 19 Dec 79, § 1; repealed and replaced by Rule 4-89, eff 27 June 89, §§ 1,2.

26.0102 Approval and incorporation.

The Territorial Disaster Assistance Plan of 1989, including all annexes, as revised from time to time, prepared and maintained by the office of territory emergency management coordination pursuant to 26.0106(b) A.S.C.A., is approved and incorporated in full by reference herein, and is attached to this chapter as Appendix A.

History: Rule 13-79 (Ex. Ord. 4-1979), eff 19 Dec 79, § 2; repealed and replaced by Rule 4-89, eff 27 June 89 §§ 1,2.

26.0103 Force and effect.

In accordance with 26.0105(b) and 26.0106(e) A.S.C.A., the rule codified in this chapter, and the Territorial Disaster Assistance Plan, as incorporated herein, have the force and effect of law.

History: Rule 13-79 (Ex. Ord. 4-1979), eff 19 Dec 79, § 3; repealed and replaced by Rule 4-89, eff 27 June 89, §§ 1,2.

APPENDIX A

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1989

TERRITORY EMERGENCY MANAGEMENT COORDINATION OFFICE

DEPARTMENT OF PUBLIC SAFETY

AMERICAN SAMOA GOVERNMENT

TERRITORY OF AMERICAN SAMOA

COMPREHENSIVE EMERGENCY MANAGEMENT PLAN

1989

(SUPERSEDES DISASTER ASSISTANCE PLAN 1978)

TERRITORY EMERGENCY MANAGEMENT COORDINATION OFFICE

DEPARTMENT OF PUBLIC SAFETY AMERICAN SAMOA GOVERNMENT

Organization CHART

EMERGENCY MANAGEMENT COORDINATING COMMITTEE

GOVERNOR

COMMISSIONER

DEPARTMENT OF PUBLIC SAFETY

(EMERGENCY MANAGEMENT COORDINATOR)

COORDINATING COMMITTEE

Director of Public Works

Director of Medical Services

Director of Port Administration

Director of Education

Director of Agriculture

Director of Public Information

Director of Communications

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OFFICE OF THE GOVERNOR

American Samoa Government
 Pago Pago, American Samoa 98799
 Peter T. Coleman, Governor
 Galea'i, P. Poumele, Lt. Governor
 April 18, 1989

GENERAL MEMORANDUM NO. 45-1989:

To : Distribution List

From : Acting Governor of American Samoa

Subject: Disaster Assistance Plan

The American Samoa Government recognizes its responsibility to mitigate the effects of natural or man-caused emergencies which result in conditions of disaster or imperil to the lives and property of the people of the Territory.

The Disaster Assistance Plan is published to insure that preparation is adequate for times of emergency. This Plan will assist and will provide for assignment of duties to Departments and Agencies of the American Samoa Government.

Pursuant to Executive Order No. 16-1985, the Commissioner of Public Safety has been directed to coordinate all efforts with the Federal Emergency Management Agency, other Federal Agencies and neighboring governments in times of disaster.

The Department of Public Safety will provide guidance and assistance to all

Government departments and agencies especially elements of local government (District, Counties and Villages) in their preparation of operating procedures essential to carrying out this Plan in the event of disaster or emergency situations.

Any recommendation that can enhance the effectiveness of this Plan is most welcome and should be forwarded to the Commissioner of Public Safety. This Plan will be reviewed and updated annually.

Galea'i P. Poumele

I. OBJECTIVE

The purpose of this plan is to provide a comprehensive emergency management program for the American Samoa Government which will insure an adequate level of disaster preparedness, an effective response and recovery from disasters or emergencies whether natural or man-made which threaten or damage public facilities and likely to or actually result in losses or hardships to individuals. Specifically this plan includes, but is not limited to, the establishment of organization and assignment of responsibilities necessary to carry out the objective.

II. POTENTIAL TYPES OF DISASTERS OR EMERGENCIES

The Islands of American Samoa are subject at all times of the year to the effects of natural or man-made disaster. These include hurricanes, floods, waterspouts, windstorms, landslides, mudflows, droughts, earthquakes, tsunamis, highsurf, volcanic eruptions, explosions, fire, civil disturbance, nuclear attack, sabotage or any other catastrophe which causes or may cause substantial damage or injury to property or Persons. Three of the recent disaster situations involved a mudslide in 1979, a hurricane in 1981 and hurricane in 1987. Pursuant to the American Samoa Government P.L. 15-105 Territorial Disaster Assistance Act, as amended by P.L. 18-6, and the American Samoa Government Comprehensive Emergency Management Plan, the Executive Order 4-1979 requires the establishment and maintenance of an emergency management plan and standing operating procedures (SOPs). Some of these disaster or emergency situations may occur after execution of

warning and other preparedness measures, but others may occur with little or no warning. The Territory Emergency Management Coordination Office (TEMCO) staff are aware of the possible occurrence of an emergency or major disaster and their responsibilities in the execution of this plan and will fulfill these responsibilities as needed. The proper execution of this plan will reduce or prevent the loss of lives and damage to property. Depending upon the severity and magnitude of the disaster or emergency situation, the American Samoa Government may be able to cope effectively with the situation, but it may be necessary to request assistance available through volunteer organizations, private enterprises, mutual aid agreements and federal sources.

III. CONCEPT OF OPERATIONS

A. General

1. It is the responsibility of each ASG Department Agency to provide for written Standing Operating Procedures (SOPs) that meet the emergency needs of their unit as well as those requirement of this plan.
2. The Commissioner of Public Safety as the Emergency Management Coordinator (EMC) will coordinate all local activities relative to the execution of this plan. He will activate the Emergency Operations Center (EOC). He will insure rapid dissemination of warning information and keep the Governor advised at all times. As the situation escalates, a recommendation to invoke the provisions of this plan will be made to the Governor. When such a decision has been made, the American Samoa Government will commit those resources which the situation demands. At such time as all available resources have been committed and if still more assistance is needed beyond ASG capabilities, the Governor may determine that a state of emergency exists. Subsequent to this action, TEMCO will coordinate requests to the proper federal agencies, including a request to the Federal Emergency Management Agency (FEMA) for a Presidential declaration of an emergency or major disaster to allow supplemental federal

financial and technical assistance to be provided. The American Samoa Government Damage Assessment Team will normally perform a preliminary damage assessment of public and private property damages to serve as a basis for the Governor's request for Presidential Disaster or Emergency declaration. Whenever possible, a joint Federal-State preliminary damage assessment will be arrived to verify the estimates of public and private property damages supporting the Governor's request and to identify those damages which would be eligible for Federal assistance under authority of the various Federal agencies.

Preliminary damage assessments must be accomplished expeditiously. When applicable the Federal Emergency Management Agency (FEMA) Region IX Director or the appointed Federal Coordinating Officer (ECO) may assign other federal agencies the responsibility of developing estimates of eligible work by category of damage appropriate to the agencies' activities. The Governor's request for a disaster or emergency declaration will be addressed to the President through the Region IX Director. The request should describe the events which led to the initiation of the request, action taken by the Territory and' evidence to indicate that the disaster is of sufficient severity and magnitude to warrant supplementary Federal Assistance. Normally assistance in formulating the request will be obtained from the Regional Director.

When the President determines that a disaster is of such severity and magnitude to warrant the disaster assistance by the Federal Government to supplement the efforts and available resources of the territorial government, he will respond to the Governor's request authorizing Federal relief and recovery assistance in the affected area. The President's Disaster declaration triggers the authority of the Disaster Relief Act of 1974 (P.L. 93-288) as amended, and the separate disaster relief authority of other

Federal agencies. The President's declaration specifies that FEMA will coordinate the Federal disaster assistance efforts and advise the Governor of the designation of the Federal Coordinating Officer (ECO). The FEMA Director will appoint the ECO, who will report to the FEMA Associate Director, State and Local Programs and Support. When the ECO is other than the Regional Director, the ECO will keep the Regional Director informed of the ongoing disaster response activities.

A Federal-State Disaster Assistance Agreement is then prepared and authenticated by the Governor and the FEMA Region IX Director. The agreement governs the expenditure of Federal funds and normally specifies the incidence period of the disaster. Establishment of areas eligible for assistance and other administrative controls, are also included. The Governor in this agreement, names the American Samoa Government Officials authorized to execute certification and otherwise act on behalf of the territory.

The ECO acts as the President's representative in the disaster area for the execution of the Federal disaster assistance program. The ECO is charged with the responsibility to coordinate the administration of all relief activities including Federal, State, or central and local governments as well as cooperating volunteer agencies such as American Red Cross, etc. The FEMA Region IX Director is responsible for all disaster relief operations authorized under P.L. 93-288, as amended. Frequently, the Regional Director will also be the ECO. He is responsible for:

- a. Making an initial appraisal of the types of relief most urgently needed.
- b. Bringing together all Federal Disaster assistance programs and coordinating and supervising their activities.
- c. Establishing field offices at the disaster scene, including the required

representation by Federal agency personnel.

- d. Coordinating the efforts of private relief organizations, such as the Red Cross, which agrees to operate under his supervision.
- e. Taking any other appropriate action to help local citizens and public officials obtain the assistance to which they are entitled.

The Emergency Management Coordinator (EMC) is the Official designated by Governor, to coordinate and supervise the territorial emergency management program in cooperation with the FCO. He also deploys and directs the local government agencies and volunteer relief organizations to respond to the emergency conditions in addition, the EMC is responsible for alerting emergency response agencies of the Federal Government, such as the U.S. Coast Guard.

In conjunction with the FCO and his staff, the EMC conducts briefings and conferences to orient state agencies and local government to the Federal emergency management program. He also evaluates, recommends and relays local government and agency requests for assistance to the FCO. The territory Emergency Management Coordination Office (TEMCO) prepares project applications for Federal assistance and forwards these to the FCO for review and approval.

After the President has declared a major disaster, the FCO, in cooperation with the EMC, will normally establish a temporary disaster field office at a central location. Other available facilities including ASG administration buildings may be utilized if the situation necessitates. The function of this office is to facilitate on the scene coordination and is under the supervision of the FCO and is staffed with representatives of FEMA Region IX and other Federal agencies having disaster assistance responsibilities in the stricken area in addition to ensuring that effective individual assistance is provided, field office personnel are responsible for advising. American Samoa Government

officials on public project eligibility and helping them process project applications, including the completion of prompt and accurate Damage Safety Reports. The EMC, along with the FCO, will establish a Disaster Assistance Center(s) in the area to provide information on the assistance available, and allow families to make application to appropriate disaster assistance programs. The location of the Disaster Assistance Center and the determination of the need of a mobile center will be made by EMC and FCO. The center will be staffed by Federal and American Samoa Government representatives as well as representatives of the Red Cross and other private agencies. The function of the Center is to provide information and to coordinate relief to individuals at the local level.

B. Phases of Emergency Management

Since this comprehensive plan is concerned with all types of hazards to which American Samoa is exposed before, during, and after an occurrence, four phases of management are considered as follows:

1. Mitigation

Mitigation activities are those that eliminate or reduce the probability of a disaster occurrence. Also are those long-term activities that lessen the undesirable effects of unavoidable hazards. Some examples include establishment of building codes, flood plain management, insurance, elevating buildings, and public education programs.

2. Preparedness

Preparedness activities serve to develop the response capabilities needed in the event of an emergency. Planning, exercising, training, and developing public information programs and warning systems are among the activities conducted under this phase.

3. Response

During the response phase, emergency services during a crisis are provided. These activities help reduce casualties and damage

and to speed recovery. Response activities include warning, evacuation, rescue, and other similar operations addressed in this plan.

4. Recovery

Recovery includes both short-term and long-term activities. Short-term operations seek to restore critical services to the community and provide for the basic needs of the public. Long-term recovery focuses on restoring the community to its normal or improved state of affairs. The recovery period is also an opportune time to institute mitigation measures, particularly those related to the recent emergency. Examples of recovery actions would be temporary housing and food, restoration of non-vital government services, and reconstruction of damaged areas.

IV. ORGANIZATION AND ASSIGNMENT OF RESPONSIBILITIES

A. Territorial

All appropriate departments and/or agencies of the American Samoa Government have responsibilities for, and authority over the effective disposition of their own resources and manpower. This may include the utilization of all public employees, if necessary, depending upon the threat or occurrence of a disaster situation. Each department and/or agency is responsible for developing and maintaining its own Standard Operating procedures (SOPs) for carrying out its disaster responsibilities outlined below and to insure protection of assigned resources (buildings, office equipment, etc.) to the greatest possible. In addition to normal functions, specific primary and support functions of each department and/or agency during a disaster or emergency situations are listed as follows:

1. Organization

- a. The Governor of American Samoa has the ultimate responsibility for direction and control over territorial activities related to emergencies and disasters.

Upon delegation of authority by the Governor, the Commissioner of Public Safety acts on behalf of the Governor in coordinating and executing Territorial activities to cope effectively with the situation.

b. Emergency Management Committee

Members of the Emergency Management Committee are selected key Departmental Heads and representatives from the private sector. The Commissioner of Public Safety as the Emergency Management Coordinator (EMC) is the Chairman of the Committee. Meetings will be at the call of the EMC and will be held at least semiannual.

The Committee will:

- 1) Review the Comprehensive Emergency Management Plan annually for continuity appropriate recommendations for improvement.
- 2) Maintain liaison with Federal counterparts during disaster operations and insure that interdepartmental procedures have been established for expedient action involving Federal assistance.

2. Responsibilities

The organization for disaster or emergency assistance operation is established around those departments and offices with responsibilities for specific emergency response functions.

1. Territory Emergency Management Coordination Office (TEMCO)

- a. Establish and maintain an Emergency Operations Center (EOC). The EOC will be activated in times of emergency or disaster situations by the Commissioner of Public Safety. The Commissioner of Public Safety will preempt the use of all facilities as necessary to carry out disaster assistance coordination.

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- b. Establish policy decision for comprehensive emergency management. rescue and keep these teams on alert during emergency and disaster situations.
 - c. Review and maintain plans for comprehensive emergency management.
 - d. Coordinate all ASG disaster relief activities to include communications, operations, reports, and public information.
 - e. Advise the Governor and ASG Departments and Agencies assigned primary responsibilities as to the threat of emergency or disaster, nature and impact of actual disaster conditions, and recommend action as to Federal assistance.
 - f. Maintain liaison with the Federal Coordinating Officer (FCO) and other Federal agencies, industry or private relief organizations having capability to provide assistance in disaster relief operations.
 - g. Review all ASG Department and Agencies SOPs for adequacy in meeting task as well as statutory responsibilities.
 - h. Do other things necessary, incidental, or appropriate for the implementation of this plan.
2. Police Bureau/Department of Public Safety.
 - a. Sound alarm with police cars sirens and public address system.
 - b. Provide traffic and crowd control during acuation, rescue and relief operations.
 - c. Protect inmates of the jail while maintaining them in custody.
 - d. Protect damaged areas and limit access in order to prevent looting.
 - e. Maintain contact with EOC and organize teams for possible search and
3. Fire Bureau/Department of Public Safety
 - a. Sound alert signal by activating siren upon notification of emergency or disaster conditions.
 - b. Extinguish fires and/or establish fire watch.
 - c. Assist in rescue and recovery of casualties.
 - d. Organize and enforce fire prevention measures to reduce vulnerability buildings and areas to fire.
 4. Harbor Patrol/Department of Port Administration
 - a. Sound alarm with police boats sirens and public address system.
 - b. Assist in fire emergencies operations on water and dock areas.
 5. Department of Health & Medical Services
 - a. Establish emergency medical care immunization and treatment stations.
 - b. Identify and provide emergency interment of the dead.
 - c. Provide inspection and analysis of water, supply, sewage disposal and damaged food-stocks.
 - d. Man the disaster Assistance Center(s).
 - e. Provide mental health service.
 6. Department of Public Works
 - a. Restore and maintain utilities and services except electricity and communications.
 - b. Accomplish Damage Assessment.
 - c. Repair roads and bridges for minimum safe use.

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- d. Maintain debris and garbage disposal operations.
 - e. Support repair of airport facilities in coordination with the Airport Administration, as necessary, for safe operation.
- f. Provide temporary housing.
7. Department of Education
- a. Take necessary action to insure safety of students and teachers.
 - b. Coordinate with the American Red Cross to:
 - (1) Provide mass shelter in available school facilities when required.
 - (2) Provide emergency feeding in schools when necessary.
 - (3) Provide emergency transportation by school buses as directed.
8. Department of Port Administration
- a. Notify all canneries, agents, owners, and operators of vessels in port, or due to arrive, of any warning received.
 - b. Secure all cargo from warehouse transit shed and outside storage areas to prevent damage or loss from wind, rain, high water or other devastation.
 - c. Provide available vessels for evacuation or transportation of disaster victims, or as needed for damage assessment teams, supply of emergency food, etc.
 - d. Provide sea search/rescue operations and maintain control of safe movements of vessels at times of emergency operations.
 - e. Assist in transportation of disaster victims and emergency supplies.
9. Department of Agriculture
- a. Secure all facilities, livestock and equipment.
 - b. Advise the Governor on availability of food.
 - c. Make assessment of damages to crops, livestock and livestock facilities and to assess assistance needed to put the land back to production.
 - d. Monitor status of food resources.
 - e. Man the Disaster Assistance Center(s).
10. Department of Legal Affairs
- a. Provide necessary disaster legislation.
 - b. Provide legal counsel to EMC.
 - c. Provide legal counsel to disaster victims at Disaster Assistance Center(s).
11. Department of Administrative Services
- a. Provide necessary comptroller services
 - b. Provide clerical and secretarial assistance in the application of disaster assistance.
 - c. Man the Disaster Assistance Center(s).
12. Office of Samoan Affairs
- a. Assemble the initial damage reports received from the village pulenu'u and relay to the EOC.
 - b. Assist the American Red Cross in coordination of private and church group volunteer services.
 - c. Arrange facilities for the Disaster Assistance Center(s).
 - d. Man the Disaster Assistance Center(s).
13. Office of Public Information
- a. Insure that warning information has been relayed to the general public.
 - b. Approve and control all announcements to be made by television.

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- c. Insure that photographic documentation is accomplished in a timely manner.
 - d. Provide appropriate press releases for approval and dissemination by the Office of the Governor. Following a Federal declaration of an Emergency or Disaster, all public information releases will be coordinated with the ECO.
 - e. Relay information and special requests received from the local government to the appropriate department or agency.
14. Office of Procurement
- a. Provide available materials for departmental needs, including furnishing for the Disaster Assistance Center(s).
 - b. Maintain accountability of stored materials.
 - c. Insure proper documentation of issued materials.
15. Office of Marine and Wildlife Resources
- a. Make watercraft available for evacuation or transportation of disaster victims and for such other uses deemed necessary.
 - b. Assist Port Administration in search and rescue operations.
16. Office of Communications
- a. Be responsible for monitoring and controlling all communications possible in order to assure centralized control when necessary.
 - b. The Director of Communications or his representative will act as the principal communications Advisor to the Commissioner of Public Safety during all emergency or disaster operations.
 - c. Restore and maintain communication services and facilities.
17. Office of Human Resources
- a. Be responsible for implementation of the Individual and Family Grant Program (IFGP) in accordance with P.L. 93-288 and FEMA Regulation 44 CFR 205.
 - b. Process necessary documents for temporary emergency personnel appointments as the need arises for period not to exceed 30 days without limitations otherwise provided by law or rule.
18. Airport Administration
- a. Notify all airport tenants-of any warning received.
 - b. Activate Emergency Procedures Plan.
 - c. Keep EOC advised of service ability of runway and, facilities.
 - d. Assist in obtaining aircraft for damage assessment when requested by Office of the Governor.
 - e. Initiate the repair of airport facilities with the support of Department of Public Works.
19. Motor Pool
- a. Recall all vehicles not essential to disaster assistance operations.
 - b. Be prepared to fuel all government vehicles and stand by for emergency transportation assignments and to keep records of the amount and date of fuel to each vehicle.
 - c. Provide emergency repairs of all government vehicles.
 - d. Provide twenty-four-hour vehicle dispatch service.
20. American Samoa Power Authority
- a. Provide emergency electrical power where it is required.

- b. Restore and maintain electrical services.

B. Local

The basic element in the operation of the local government is the Aiga (family). Each aiga has a Village chief who is responsible for the general welfare of the family. The village chief who is responsible to the County Chief who in turn works closely with the District Governor in all matters concerning local affairs.

The District Governor is responsible to the Secretary of Samoa Affairs. The Secretary who is appointed by the Governor, is politically the head of local government. The village pulenu'u shall be responsible for the following:

1. Be alert for instructions from police, television or radio to be relayed to the people of the village.
2. Direct village people to take shelter or evacuate when instructed.
3. Report to the Department of Local Government-Samoan Affairs) unusual conditions that require immediate action.
4. Insure that injured persons are assisted immediately.
5. Maintain a list of injured and deceased.
6. Control and distribute food and supplies provided during and after the emergency.
7. Make house count and report the number of houses with minor damages (less than 10%) major (over 10%) or destroyed (over 75%).

C. Federal

1. The Federal Emergency Management Agency (FEMA) has been delegated the responsibility for providing Federal Disaster Assistance under the provision of the Disaster Relief Act of 1974 (P.L. 93-233, as amended). This law authorizes FEMA to coordinate the activities of Federal Agencies in providing disaster assistance, and to direct any Federal agency to utilize its available personnel, supplies,

facilities and other resources in providing such assistance as the result of a major disaster or emergency determination.

Federal disaster assistance is intended to supplement but not to be a substitute for that afforded by the American Samoa Government and private relief organizations. When the Governor believes that Federal assistance is necessary to supplement the efforts and available resources of the Territory, he may request that the President declare a major disaster or make an emergency determination in order to implement the provisions of P.L. 93-288. Additional statutes authorized other Federal agencies to provide disaster assistance. When a major disaster is declared or an emergency is determined, such Federal assistance is subject to coordination by FEMA.

The FEMA is charged with encouraging the development of comprehensive plans and practicable programs for preparation against disaster, including hazard reduction, avoidance, and mitigation, and for providing guidance to State and local governments in coping with disaster hazard pending or actual disasters. FEMA provides aid to States in the form of technical assistance to complement or supplement the State's own resources in the formulation and implementation of plans and programs for preparation, against and recovery from disasters.

2. United States Coast Guard

The United States Coast Guard Liaison Officer will maintain close contact with both the Emergency Management Coordinator (EMC) and the Coast Guard District Headquarters in Honolulu, Hawaii, concerning possible Coast Guard assistance in the event of a disaster.

3. United States Army Reserve (American Samoa Unit)

The Army Reserve in the event of a disaster, will immediately be organized to assist in

evacuation procedures, prevention of looting and transportation of victims to hospital at the direction of the Governor.

4. National Oceanic Atmospheric Administration/National Weather Service, Tafuna
 - a. The National Weather Service Station in Tafuna of NOAA will provide the Commissioner of Public Safety, available information as to the nature, imminence and potential severity of the anticipated danger.

D. Private Relief Organizations

1. American National Red Cross

The American Red Cross is an emergency oriented service agency that focuses its efforts on meeting the emergency needs of disaster victims. (Shelter, food, clothing, medical and health assistance, counseling, blood and blood products). The Red Cross also provides additional assistance and services beyond mass care including the handling of welfare and casualty inquiries. The American Red Cross is mandated under Federal Charter provided by P.L. 58-4 to provide relief and recovery assistance, including mass care, in time of peace time caused disaster. In the Territory of American Samoa, the American Red Cross has the initial and primary responsibility for immediately meeting the mass case needs of disaster victims in coordination with the Territory Emergency Management Coordination Office. American Red Cross Disaster Action Teams will be dispatched to provide immediate on the scene emergency service to disaster victims and emergency workers in close coordination with TMECO. Assistance will be provided to disaster victims by opening mass shelters, operating fixed and mobile feeding stations, emergency first aid stations, and other facilities as appropriate. Red Cross mass care services apply to localized emergency situations such as those caused by tropical storms, flash floods, mudslides, etc., as well

as major disasters affecting the entire territory.

The Department of Education will coordinate with the Red Cross and make available school facilities for use in feeding and shelter, food supplies from the school lunch program and personnel to assist with mass feeding. Other churches, charitable and community groups that have the capability as facilities to assist, will coordinate their activities with the American Red Cross. Some specific actions taken by the American Red Cross would include:

- a. Food for victims and disaster workers.
- b. Emergency clothing.
- c. Mass shelter furnishings (beddings, mats, etc.)
- d. Transport of injured.
- e. Family services and rehabilitation.

The Chairman of the Local American Red Cross Chapter will keep the Commissioner of Public Safety advised of all plans and activities.

2. Churches

Local church groups are encouraged to establish contact with the American Red Cross in order to insure coordinated assistance activities. These should include but not be limited to:

- a. Providing space for mass shelter, feeding or emergency medical care.
- b. Establish collection points for donated food and clothing.
- c. Assist in reuniting families and relatives when requested.

3. Aiga System

In accordance with Samoan customs, village families cooperate to assist each other with basic needs and comforts. During

disaster situation it is particularly important that these efforts be coordinated with those of other relief agencies. Therefore, it is essential that the authority of the pulenu'u be observed at all times and that individual problems be brought immediately to his attention. Pulenu'u representation will be provided as appropriate at each FEMA Disaster Assistance Center, or mobile team appearance.

4. Local Industry

It is imperative that industry take immediate action to insure that personnel and resources are protected. Procedures for the shut down of operations and evacuation should be established and adhered to. Damage reports and requests for assistance should be provided to the Emergency Operations Center (EOC). Useable resources should be identified and made available to the Procurement Office.

V. AUTHORITY

A. Federal

1. United States Executive Order No. 10264, June 19, 1951.
2. Federal Civil Defense Act of 1980, P.L. 81-920 as amended.
3. United States Disaster Relief Act of 1974, P.L. 93-288 as amended.
4. Emergency Management and Assistance, 44 U.S. Code 2.1 (10-01-1980)
5. Federal Emergency Management Agency Regulations 44 CFR 205.

B. Local

1. American Samoa Government P.L. 15-105 Territorial Disaster Act, as amended by P.L. 18-6.

VI. EXECUTION

A. Warning

In a slow building-up disaster or emergency situation (hurricane or tsunami), the ElviC will initiate the

Alert Notification List. In those situations of obvious fast build-up disaster situation (earthquake), the EMC will initiate the Alert Notification List on his own initiation. Public warning will be by a "wailing sound" for 2 to 5 minutes, (high or low tones) of the bay area sirens and whistles. Police cars will be dispatched to announce warning to the village pulenu'u. Radio and T.V. will be utilized continuously during the emergency build-up period. Advisories and instructions will be issued through the disaster period as long as radio and/or television is available.

B. Response

1. Pre-emergency Phase

This phase includes periods of normal operation as well as when warning of potential emergency has been issued. Government departments and agencies will take the following actions as appropriate to increase their capability.

- a. Review intra-departmental procedures for accomplishing responsibilities assigned in the plan.
- b. Establish and maintain liaison with the Territory Emergency Management Coordination Office (TEMCO) to insure an awareness of available departmental resources and procedures for coordination during emergency situations.
- c. Identify, train and exercise department personnel in implementation of the plan.
- d. Participate in inter-departmental disaster response tests and exercises.
- e. Response to notification of potential emergency situation.

2. Emergency Phase

This is characterized by the existence of conditions indicative of potential disasters. Upon such determination, the EMC will immediately activate the EOC and begin the alert notification.

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- a. The National Weather Service will provide the Commissioner of Public Safety, available information as to the nature, imminence and potential severity of the anticipated danger.
- b. The Commissioner of Public Safety as the EMC will evaluate reports of the situation, and when necessary:
 1. Advise the Governor of the impending situation and recommend appropriate action.
 2. Determine the need for the territorial response.
 3. Activate the EOC and notify appropriate departments and offices of possible plan execution.
 4. The EOC will initiate actions in accordance with established procedures to meet the requirements of the situation as determined by the EMC.
- c. When directed by the EMC, Radio Samoa WVUV and the Office of Public Information will broadcast the warning over the radio and television.

3. Termination of Immediate Danger

Upon determination by the EMC that the immediate emergency has terminated, notification will be made to the public by:

- a. Long steady tone on bay area sirens and whistles.
- b. Police cars dispatched to advise village pulenu'u.
- c. Telephone, Radios and T.V.

C. Recovery

1. Search and Rescue

Following termination of immediate danger and as soon as safe and practical, search for and rescue of victims trapped or stranded in the disaster area will be given priority and other recovery efforts. Close cooperation with debris removal and emergency

repair crew is essential. The EMC will coordinate the use of the Department of Port Administration Search & Rescue Squad, Harbor Patrol, Public Works and other necessary agencies. Medical personnel and field medical facilities will also be utilized.

2. Damage Assessment and Survey

The Damage Assessment Team will be dispatched to gather data necessary for accurate determination of loss. Detailed reports will be provided to the Governor, in the event a request for Federal assistance has been initiated a damage survey will be required. In this case, only those members of the damage assessment team are required to augment the Federal Assistance Specialists Team will be utilized.

3. Debris Removal and Emergency Repair

Debris and damaged facilities are a threat to the general health, safety and welfare because they endanger and may trap injured people. They deny the use of essential services and roadways in the disaster area and inhibit search and rescue, firefighting and other emergency assistance. The Department of Public Works has debris clearance and emergency repair responsibilities. They must closely coordinate their operation to avoid duplication of effort and the waste of time in order to obtain maximum speed, efficiency, and effectiveness.

4. Federal Assistance

Requests for Federal Assistance will be prepared by the EMC in accordance with the provision of P.L. 93-288, Federal Disaster Assistance Programs Handbook DR&R 1 and DR&R 2 and the Digest of Federal Assistance Programs, which provide necessary application details.

5. Reporting

Each departmental agency assigned tasks will provide hourly situation reports (SITREPS) when requested by the EMC. Following the initial emergency and recovery phases daily SITREPS will be prepared in narrative form and submitted to the EOC, NLT 1700 hours.

VIII. DIRECTION AND CONTROL

A. General

The Governor of American Samoa is responsible for direction and control over all comprehensive emergency management activities in the territory.

B. Emergency Operations Center (EOC)

The Emergency Coordinating Committee, under the direction of the Commissioner of Public Safety, assumes direction and control activities from the temporary EOC, now located at the Police Dispatch Center of the Department of Public Safety in Fagatogo. It is capable of sustaining operations involving (20) people for a minimum of 14 days. The construction of a primary LOC, complete with update communications and centralized control is in the design stage.

VIII. CONTINUITY OF GOVERNMENT

Effective comprehensive emergency management operations depend upon two important factors to ensure continuity in the government from the highest to the lowest level:

- (1) Lines of succession for authorized personnel; and
- (2) Preservation of records.

A. Lines of succession

1. Territorial level

Article IV, Section 1 of the Constitution of American Samoa vests in the Governor, the chief executive power of the territory. Title 26, Chapter 1 of the American Samoa Administrative Code establishes the emergency management powers of the Governor. The Governor/ Lt. Governor, the Commissioner of Public Safety or the Disaster Coordinator will activate the Emergency Operating Center. He will insure rapid dissemination of warning information and call in the crisis management staff, the Coordinating Committee, depending upon severity and magnitude of disaster or emergency situation.

B. Preservation of Records

(Note: This section deals only with recorded and related records that support the continuity of government).

Each ASG department and/or agency is responsible for maintaining and recording all legal documents

affecting the organization and administration of emergency management functions. It is the further responsibility of government officials to ensure that all records are secure and protected from elements of damage or destruction at all times.

IX. DEFINITIONS

A. Annexes

Provide more information regarding policies, responsibilities, and procedures about mitigation, preparedness, response, and recovery activities associated with a given functional area. Annexes are on file in each ASG Department and Agency as well as the master file in the Territory Emergency Management Coordination Office (TEMCO) and EOC.

B. Basic Plan

Establishes general policies, responsibilities, and procedures for implementing comprehensive emergency management.

C. Emergency or Disaster

An occurrence threatening the health, safety, or property of a community or larger area. Emergencies of disasters are categorized as being natural or man-caused, including war related. Examples include hurricanes, highwinds, earthquakes, mudslides, tsunamis, floods and man-caused emergencies (explosion, fire, contamination, war-related).

D. Hurricane Watch/Hurricane Warning

A “hurricane watch” is issued whenever a hurricane becomes a threat to coastal areas. Everyone in the area covered by the “Watch” should listen for further advisories on the radio and be prepared to act promptly if a hurricane warning is issued. A “hurricane warning” is issued when hurricane winds of 74 miles an hour or higher, or a combination of dangerously high water and very rough seas, are expected in a specific coastal area within 24 hours.

Precautionary actions should begin immediately.

TERRITORY OF AMERICAN SAMOA
DISASTER ASSISTANCE PLAN

-ANNEX A-

VULNERABILITY ANALYSIS

DISASTER ASSISTANCE PLANNING, &
COORDINATION OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

TERRITORY OF AMERICAN SAMOA

VULNERABILITY ANALYSIS

I. PURPOSE

This annex has been prepared in order to identify those natural and man-caused catastrophes that would most likely result in a disaster or state of emergency within the Territory of American Samoa.

The geography, climate and socio-economic characteristics of the area and its people profoundly affect the impact of normally recognized disaster situation. Consequently, substantial background information is essential for proper perspective.

II. PHYSICAL CHARACTERISTICS

American Samoa is the southernmost possession of the United States and consists of a group of seven island located in the South Pacific at about 170 degrees west longitude and 14 degrees south latitude. These islands contain a total of approximately 76 square miles and are about 2300 miles southwest of Hawaii, 1200 miles northwest of Tahiti, 1600 miles northeast of New Zealand and about 80 miles southeast of the independent state of Western Samoa (TAB A1). The islands of Samoa are located along the crest of a submarine volcanic ridge which extends for over 300 miles to the southeast.

The five volcanic islands of Tutuila, Aunu'u, Ofu, Olosega, and Ta'u are the major inhabited islands. Tutuila, the largest and principal island is the center of government and business. It contains approximately ninety percent of the territory's 30,000 population within its 53 odd square miles. Aunu'u, a satellite of Tutuila lies one mile off the east coast of Tutuila, the three islands of Ofu, Olosega, and Ta'u are collectively called the Manu'a islands, and are some 65 miles to the east of Tutuila. The two

remaining islands of American Samoa are Rose and Swains, both of which are coral atolls. Rose Island, about 160 miles to the east of Tutuila is the Territory's only uninhabited island. It does not have enough water to support human life and is preserved as a wild life refuge for sea turtles and birds. Swains Island, about 230 miles north of Tutuila, is the northernmost island of the territory and is geographically a part of the Tokelau Islands, but administratively is a part of American Samoa. The island is privately owned by the descendants of a New England whaling captain.

III. TOPOGRAPHY

The islands of American Samoa are of volcanic origin and exhibit the rugged topographic relief common to Pacific volcanic islands. The islands rise precipitously from the ocean and are covered with lush tropical vegetation. Typically, sheltered embayments develop small coastal plains providing one of the few sources of flat land in the territory. Palm lined sand and coral rubble beaches rim much of the islands except where exposed to severe marine erosion. Beyond the narrow beach, there is usually a moderately wide fringing reef providing limited protection to the shore. The maximum elevations for the five major islands are: Tutuila 2142', Aunu'u 280', Ofu 1621', Olosega 2195', and Ta'u 3180'. Drainage is provided by deeply incised stream valleys radiating from the summit of each distinct volcanic cone. Tutuila is geologically the most complex of the islands. Its spine consists of overlapping centers of early volcanic activity. The north shore is deeply indented by embayments with very little flat land other than at the mouth of each of the streams. The coastline is typified by high cliffs plunging directly into the ocean. The southern coastline is slightly more protected. The Tafuna-Leone Plain extends along the southside of the island from the village of Nuuli westward to Leone. This formation is believed to be a late stage lava flow overlying a former barrier reef. During a lower sea stand, what is now Pago Pago Harbor was carved as a major stream valley. A rise in sea level flooded the former valley and produced one of the deepest and most sheltered harbors in the Pacific. The majority of the southern coast consists of broad fringing reefs except immediately near stream mouths where the salinity is too low for coral growth. Tutuila island is about 18 miles long and varies in width from 1 to 6 miles. The total land area is about

53 square miles; land with slopes less than thirty degrees is scarce and found mostly in the Tafuna-Leone Plain which is about 13 square miles. Total land area with slopes less than thirty degrees is approximately 16 square miles or about 30 per cent of the island.

Aunu'u off the east coast of Tutuila, is a small volcanic tuff cone that is dominated by a Erosion since the end of the volcanic activity slightly dissected crater whose rim rises 200 to has produced sedimentary deposits at the foot 300 feet above sea level. The land area is just of steep cliffs, valley floors, and along the coast over one-half of a square mile. The floor of the geology of the Manu'a islands is of crater is occupied by a marsh and lake. Marine essentially the same character but less complex erosion has developed steep cliffs on the east Soils in American Samoa are generally and south sides of the cone. Habitation on the island is on a low coastal flat land that rims the west and north sides of the island.

Ofu and Olosega are remnants of a single found in several plain locations volcanic island and are separated by a 500 foot wide strait. Both islands rise abruptly from the ocean with little flat land other than a narrow band along the coast. There are few well developed drainage basins on either island. The land areas of Ofu and Olosega are approximately 3 and 2 square miles respectively.

Ta'u is the largest of the Manu'a islands, covering 17 square miles. It is formed by the northern hemisphere of the volcano, Mt. Lata. Streams are scarce and have poorly developed and shallow valleys. The south side of the island is inaccessible and consists of spectacular cliffs and cascades that drop over 1000 feet into the sea. Most of the coastline along the northern and western sides of the island are fringed by a fairly wide coastal plain fronted by narrow beaches. The villages on the west end of the island are built on terraces which are 10 to 15 feet above sea level and are composed of sand dunes and storm benches of coral sediments deposited by high waves.

IV. GEOLOGY

Eminent Geologists (Stems 1944) reports that the island of Tutuila is composed of basaltic rock resulting from five major centers of volcanic activity. The major period of eruption was in the early to mid

pliocene period. Four of the eruptions merged into a single island substantially larger than present day Tutuila. Subsequent erosion caused the shoreline to retreat. Later a fifth volcano built the Tafuna-Leone Plain area. A smaller submarine eruption resulted in the small tuff cone island of Aunu'u. Erosion since the end of the volcanic activity has produced sedimentary deposits at the foot of steep cliffs, valley floors, and along the coast. The geology of the Manu'a Islands is of essentially the same character but less complex.

Soils in American Samoa are generally weathered volcanic material or coralline beach sands. The consistency varies from deposits of cinder or ash to clay. Clays and sandy loams are found in several plain locations.

V. CLIMATE

The climate of American Samoa is tropical and characterized by wet and dry, seasons. During the wet or summer period, November through April, the islands lie in the Intertropical Convergence zone. This results in weak and variable winds; high temperature, rainfall and humidity. In the dry season or winter from May through October, the islands are influenced by the southern hemisphere trade winds. The pre-Tailing southeasterly winds bring slightly lower temperatures, and less rainfall and humidity.

The' precipitation results from the upward deflection of the trades as they pass over the island as well as from major storm fronts and isolated thunderstorms. The annual precipitation vales with both location and elevation. The Pago Pago airport on the Tafuna-Leone Plain receives an average of 125 inches per year. Whereas the Pago Pago Harbor area, only five miles away, receives an average of nearly 200 inches per year. The summit of Mt. Alava which overlooks Pago Pago Harbor at an altitude of 1600 feet receives more than 250 inches year. Nevertheless, seasonal rainfall variations are considerable and is not uncommon for extended dry periods of two or three months duration to result in critical water supply shortages.

The average temperature is about 80 degrees F. The mean daily range is about 12 degrees F. and the mean seasonal variation is only 3 degrees F. January, February and March are the warmest months, while

June, July, and August are the coolest. The highest recorded temperatures have been in the low 90's and the lowest was near 60 Degrees F,

VI. FLORA AND FAUNA

The vegetation of American Samoa consists mostly of dense tropical forests. Approximately 30 percent of Tutuila and 10 percent of the Manu'a group have been cultivated in banana, breadfruit, taro and coconut.

American Samoa has few endemic animals. Domestic animals such as fowl, pigs and dogs were brought in with early Polynesian settlers. There are no snakes but other small reptiles are plentiful. The most abundant forms of wildlife are birds. The number of species is limited to about thirty indigenous species and a dozen or so seasonal inhabitants. There are some freshwater fish in the very few nonintermittent flow streams. The reef areas fringing the islands are characterized by numerous species of fish. These reef flats constitute a valuable resource. They extend seaward from the shoreline for distances up to half a mile and are utilized extensively by the Samoans for subsistence fishing. The reefs also provide some protection to the island from storm generated high seas and serve to replenish the sand beaches.

VII. SOCIO-ECONOMIC CHARACTERISTICS

The people of American Samoa are culturally tied to the Western Samoans. The Samoan people are Polynesians as are the Hawaiians, Tahitians, Tongans, and the Maoris of New Zealand. Their traditional lifestyle revolves around the aiga or extended family.

The aiga is a communal lifestyle headed by a matai or chief. The matai is responsible for the welfare of all under his rule. He is also responsible for protection and distribution of the families land.

Historically, each village which is composed of one or more aigas, was self supporting, and trade with other villages or outsiders was not a basic necessity of life. Increased contacts with the Western World have caused the development of a job oriented cash economy. This cash economy is in conflict with the traditional Samoan lifestyle (fa'a Samoa), and, increasingly Samoans are being faced with the conflicts between the desire for Western material goods and a strong cultural link with fa'a Samoa.

Traditional Samoan values and authority are being diffused and American Samoa is becoming increasingly Westernized.

The population of American Samoa today stands at approximately 30,000 with projection of limited (1.5%) growth through the remainder of this century.

The economy is dependent upon a very limited base. Employment trends in American Samoa substantiate the shift from a subsistence type of economy to a cash economy previously mentioned. With an estimated work force of some 6,000 persons, approximately 50% are employed by the Government of American Samoa. The remainder are engaged in food processing industries, can manufacturing, shipping, transportation and tourism.

Although American Samoa is remote from the centers of world trade, it has reasonable air and sea access from the outside world. Pago Pago International Airport is located about nine highway miles from the Pago Pago Harbor area. Regularly scheduled air service is provided to Honolulu, Australia, New Zealand, Tahiti, Western Samoa, Fiji, Tonga, and other neighboring islands.

Pago Pago Harbor is considered to be one of the best deep draft harbors in the Pacific. The deepwaters extend from the ocean into the inner harbor, and there has never been a need to dredge or maintain the entrance channel. Depths over 250 feet are recorded at the mouth of the harbor, shallowing to 120 feet three quarters of the distance into the harbor. The right angle bend in the harbor provides the inner harbor with excellent natural protection from deep ocean waves and swell. Inter-island navigation is provided between Pago Pago Harbor, Aunu'u, and Manu'a Islands.

Highway transportation on Tu'tuila centers on the major paved road which extends for about 35 miles from Tula on the eastern end of Poloa on the western end along the southern coast of the island. This coastal road provides the only access between Pago Pago and the International Airport. There is limited road development on the other islands. (TAB A-2).

Historically, land use patterns within American Samoa were dictated by the communal lifestyle of the village. In general, a village would be developed around a large open space known as the malae. The

village green was the center of community life, around it were located the various fales or houses of the matais and other villagers. The location of a dwelling in relation to the malae was determined by the title of the resident. Agriculture plots were located around the village and the matai assigned cultivation of specific plots to members of his aiga. The form of development resulted in clustering of habitat areas along the coast, usually at a point where a fresh water stream met the ocean. Between villages, the lands would be either cultivated or undisturbed. Some of this type development remains today. However, development of the road system and increased population concentration in the Pago Pago Harbor, or Bay area as it is frequently referred to, has modified the basic pattern of development. Faes are now more likely to be oriented facing the road rather than a malae. This has led to ribbon type development along the road and it becomes increasingly more difficult for an outsider to determine where one village ends and another begins. However, even with these changes, the traditional pattern of land ownership by the matai remains the same.

The Western concept of land use planning, particularly zoning, is not applicable to the existing land tenure system that gives virtually unlimited control of the land to the matai. Attempts have been made at developing a territorial wide land use plan. At present, the only land use plan in existence is for the government owned lands in the Bay area. There are two zoning districts in the “Bay area” and the second in the Tafuna area including the airport industrial park.

VIII. HAZARDS TO AMERICAN SAMOA

With the foregoing in mind, a better understanding of the impact of recognized hazards on the social and economic structure can be achieved.

American Samoa is subject to the adverse effects of hazards of the general categories; Weather, Geologic, and Man caused Weather hazards are by far the most devastating. Hurricanes in particular have on occasion caused extensive damage. Available historical data is limited. This is mostly due to poor record keeping or loss of documentation through fire or other destructive forces. Word of mouth, especially recollections of the elderly matais, although sometimes quite elaborate, does provide an insight to

the frequency and severity of previous disasters. The most severe hurricane on record struck American Samoa on 9 January 1915. Although the main force centered on the Manu’a Island group, all of Tutuila felt its ravages. For the first time in the history of American Samoa, the Congress of the United States voted direct contribution for relief in the amount of \$10,000. The American Red Cross donated an additional \$2,000. These were considered large sums especially in view of the limited economic development of American Samoa at that time. Disaster assistance and recovery was primarily through the aiga structure, which has been the historical case. Although the Manu’a islands were virtually stripped of all vegetation and consequently lost all food supplies, the people were able to subsist through rapid recovery of some food items floating in the waters which were impervious to the effect of the water, coconuts and some bananas recovered rapidly were usable. Most important was the mutual air assistance from neighboring Western Samoa. The cultural ties of these two nations far exceed the requirement for written agreement to cover such assistance historic these two countries, although now politically international in character, have come to each other’s aid. There is every reason to believe that this relationship will continue.

The most recently recorded hurricane to strike American Samoa was in January 1966 when substantial structural damage occurred throughout the island of Tutuila. For the first time, the ramifications of disrupted government and economic activities in the rapidly growing and high density Bay area were felt. Once again, much relief came in the form of mutual aid from Western Samoa. Federal assistance was substantial and provided long range recovery particularly in the area of new residential housing.

It appears that storms of hurricane force do not strike the island as frequently as other areas. Nevertheless, the storm tracks surround American Samoa and the vulnerability must be recognized. (TAB A-4a, b, c, d, e).

Waterspouts are not uncommon but they tend to occur outside the reef protection and are less violent than those occurring in other parts of the world. It must be recognized that any occurrence of waterspouts is potentially devastating particularly in view of the

concentrations of population to the narrow shoreline areas.

Windstorms coupled with heavy rainfall can result in landslides and mud flows of extreme severity. The denuding effect on the tropical vegetation by sustained high winds will permit the soil on the precipitous slopes of the island to slide in avalanche fashion. This is particularly true when the soil becomes soaked and is moved by water flow resulting from extremely heavy rain fall. A recent instance of such an emergency caused over \$500,000.00 damage. Although this incident was not disastrous in magnitude, the potential remains and must be considered.

Droughts have occurred on several occasions during the past history of American Samoa. Here again the particularly devastating effect has been magnified by the urban type development and concentration of population, in the Bay area. Increased living standards have naturally placed proportional demands upon the water supply system. Albeit difficult to understand how a territory of only 76 square miles, which receives an annual rainfall of over 150 inches and has a population of only 30,000, can have water supply problems, this answer is of course that existing water systems are, at times, deficient in producing and delivering water in sufficient quantity and quality and are in need of improvement. The two types of water systems within the territory are the centralized Government of American Samoa system of Tutuila (primarily for the Bay area) and the individual village systems throughout the Government system consists of interconnected wells and surface catchments. This basic system was built by the U.S. Navy during the 1940's and was designed for the small navy installation in the Bay area, with no thought of becoming the main water supply for the general population. Recent upgrading and quality improvement of the system will do much to alleviate the effects of periods of limited rainfall. Nevertheless, a long range expansion program and increased public sensitivity to the need for conservation and protection of water for health and economic reasons is essential.

Geologic Hazards causing disasters in American Samoa are less frequent but particularly more severe

than weather hazards This is particularly true because of the little or no warning period possible.

Earthquakes are felt frequently, throughout, the Territory. Most of these are of low magnitude and are probably centered many miles to the south in the area of Tonga. The main Pacific Basin faulting approaches from the south and turns west toward Indonesia. (TAB A-5). However, there are numerous fracture zones through the area which possess the potential for severe disturbances. In realities it is the result of the earthquake or undersea disturbance some distance from American Samoa that provides the real threat, the Tsunami. Here again, practically no written reports are on record and the tales of the matai provide some interesting visions of walls of water bearing down on American Samoa. Factually, the Tsunami is the most devastating catastrophe which could strike American Samoa, if generated by an undersea earthquake in the Tongan Trench, under the right set of circumstances, a Tsunami could hit the islands and particularly the Bay area with such swiftness that warning may not be possible in sufficient time to be effective (TAB A-6). The destruction and loss of life in such a case would easily reach disastrous proportion. The situation would be further compounded since the shore road from the Bay area to the Airport would no doubt be inundated. The question of evacuation of injured via aircraft and the air shipment of vital food and supplies may only be academic since the airport itself is situated right on the coast in an area subject to high water damage. This brings to mind another hazard of lesser but still significant potential.

High Surf conditions have occurred on numerous occasions, invariably the result of storms within a few hundred miles distance. These conditions of high pounding surf easily incapacitate areas of the shore roads. Although hazard reduction measures are being taken to reinforce existing and construct new sea walls, the impact on increasing urban development can be severe. Volcanic activity, although extremely remote, remains of limited potential. Craters still exist on the island of Tutuila and the area just to the south near Tonga has reported frequent appearances and disappearances of small volcanic cones from the ocean floor.

Man-caused hazards vulnerability in American Samoa understandably is less than in other parts of the United States, but is directly related to the territorial development and urbanization. Additional impact must be considered as a result of the background and immature industrial sophistication of the people. Inadequate planning has resulted in the establishment and continued use of some hazardous procedures. Paramount among these is the oil and fuel loading dock in Pago Pago Harbor. Situated only a few feet from the Rainmaker Hotel (TAB A-3), it is used by large ocean-going tankers to off-load supplies of oil and fuel (including aviation fuel) on a monthly basis. These fuels are transported by underground pipes to a tank from approximately one half mile distant. The dock is also used for refueling the tuna fishing fleet as well as other itinerant vessels. The increased population density in the Bay area now subjects hundreds if not thousands of people and millions of dollars worth of facilities to the effects of an inadvertent oil tanker fire or explosion. Although steps have been taken to reduce the hazard through the imposition of more stringent safety measures during loading and off-loading operations, the hazard potential will exist so long as the facility is located adjacent to such congested area. The associated hazard of large oil spills is always present within the confines of the narrow harbor area. A large spill could easily inundate the surrounding reef area and virtually choke the essential supply of sea food sustenance for the population. As the move toward urbanization continues, more and more of the category of disasters induced by man (i.e; fires, explosions, transportation and industrial accidents or utility failures) will become highly potential hazards.

In this connection, it is conceivable that a large wide-body aircraft accident could result in the taxation of medical and service facilities to catastrophic if not disastrous proportions. Such a situation would be assured in the event an even minor natural hazard was being experienced simultaneously.

IV. CONCLUSION

The physical characteristics, topography, geology, climate, vegetation as well as the socio-economic characteristics, of American Samoa and its people must be understood and held in proper perspective in order to adequately assess the vulnerability of the area

to known hazards. The impact of commonly understood natural hazards such as hurricanes, wind and rain storms, earthquakes, tsunamis, as well as man-caused hazards is highly affected by the background as well as urbanization trends now existent. Whereas the people have for centuries weathered natural disasters, and still possess the inherent native outlook to do so, the encroachment of western ways makes Federal assistance a necessity. Consideration must be given to the somewhat naive and unsophisticated approach of the people toward the need for and efficient utilization of Federal assistance.

Hazard reduction measures in areas involving natural disasters depend greatly upon improved communication capability for adequate warning. The mitigation of man-caused disasters necessitates promulgation of strict zoning and building codes at least in the business and industrial areas.

HURRICANES IN THE WESTERN SOUTH PACIFIC

In 1853, Dobson (52) published a list of 24 hurricanes from Pacific island groups, together with some Australian storms, not here considered. In 1893, E. Knipping (106) extended the island list to 120, and 10 more were added in 1897 (48). Schuck (158) studied the time and place distribution, and added 5 to the list, bringing it up to 135. In 1920 additional storms were listed by the British Admiralty (20) and the United States Hydrographic Office, I was able, with the help of many generous residents of different groups, and the assistance of members of the Commonwealth Weather Bureau, to increase the list notably.

The occurrence by island groups and the monthly distribution of tropical hurricanes in the South Pacific from New Caledonia to the Tuamotu

Archipelago, inclusive, are listed in Table 6, based on a total of 259 hurricanes. As some storms affected more than one-island group, the total given is 311.

The record of storms varies greatly. For certain groups and in certain decades the information is fairly complete; for others it is fragmentary.

TERRITORY OF AMERICA SAMOA

DISASTER ASSISTANCE PLAN

1987

-ANNEX “B”-

JURISDICTIONAL ARRANGEMENTS

TERRITORIAL EMERGENCY MANAGEMENT
COORDINATION OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

TERRITORY OF AMERICAN SAMOA

TERRITORIAL, DISTRICT AND LOCAL
GOVERNMENT

I. PURPOSE

This annex has been prepared in order to provide an understanding of the government and cultural institutions of American Samoa. This information is considered essential for proper administration of any disaster or emergency assistance program.

II. TERRITORIAL GOVERNMENT

The territory of American Samoa is an insular possession of the United States, administered by the Department of Interior. The Governor and Lieutenant Governor are elected by popular vote for four-year terms, and the Territory’s affairs are handled through the Director of Territorial Affairs. The organizational chart for the territorial government is shown on TAB B-1.

The territorial government of American Samoa is unique in that many of the employees, especially in the upper management and technological fields are employed on a two year contract basis. There is, therefore, a constant turnover of personnel. The large turnover in personnel together with a shallow depth of talent sometimes causes the responsibilities of one department or division to be shifted to another which has an individual talented in the area of the departing employee.

A significant portion of the territorial government’s operations and capital improvements are Financed through federal grants. Receipt of a large grant

sometimes necessitates the formation of special task forces or agencies which operate for the length of the grant. These task forces utilize available personnel from several agencies to complete the project. As a result, the territorial government is very fluid in personnel, and the responsibilities of the various agencies. However, the government is relatively small and without complicated, overlapping jurisdictions.

III. DISTRICT AND LOCAL GOVERNMENT

The Samoan Legislature or Fono. Title 2 of the American Samoa Code and Article II of the Constitution of American Samoa provides for the establishment of the legislative branch of the territory. The legislature meets twice every year for 45-day sessions, usually in July and January.

The Senate: The Senate consists of eighteen members elected to Senate Districts that are comprised of the following counties. See TAB B-2 for a map of the counties of American Samoa:

- Senate District 1: Fiti’uta, Faleasao and Ta’u Counties Two (2) Senators
- Senate District 2: Olosega and Ofu Counties One (1) Senator
- Senate District 3: Sa’ole County One (1) Senator
- Senate District 4: East and West Vaifanua Counties One (1) Senator
- Senate District 5: Sua County Two (2) Senators
- Senate District 6: Ma’oputasi County Three (3) Senators
- Senate District 7: Itu’au County Two (2) Senators
- Senate District 8: Ma’upu (Tualauta) County Two (2) Senators
- Senate District 9: Leasina County One (1) Senator
- Senate District 10: Tualatai County One (1) Senator

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Senate District 11: Fofu County One (1) Senator

Senate District 12: Lealataua County One (1) Senator

The Senators are elected in accordance with Samoan Custom by the County Councils of the county or counties they represent. The Senators serve a term of four years.

The House of Representatives: The House consists of twenty members elected to House Districts that are made up of the following villages or counties:

House District 1 : Ta'u, Fiti'uta and Faleasao Counties Two (2) Representatives

House District 2 : Ofu, Olosega and Sili One (1) Representative

House District 3 : East and West Vaifanua Counties, composed of the villages of Alao, Aoa, Onenoa, Tula and Vatia, One (1) Representative

House District 4 : Sa'ole County, composed of the villages of Aunu'u, Amouli, Utumea and Alofau, One (1) Representative

House District 5 : Sua County No. 1, composed of the villages of Fagaitua, Amaua, Auto Avaio, Alega, Aumi and Lau'i'i, One (1) Representative

House District 6 : Sua County No. 2, composed of the villages of Sa'ilele, Masausi, Masefau and Afono One (1) Representative

House District 7 : Ma'oputasi County No. 1, composed of the villages of Fatumafuti, Faga'alu and Utulei One (1) Representative

House District 8 : Ma'oputasi County No. 2, composed of the village of Fagatogo One (1) Representative

House District 9 : Maoputasi County No. 3, composed of the village of Pago Pago One (1) Representative

House District 10 : Ma'oputasi County No. 4, composed of the villages of Satala, Atu'u and Leloalua, One (1) Representative

House District 11 : Ma'oputasi County No. 5, composed of the village of Aua, One (1) Representative

House District 12 : Itu'au County, composed of the villages of Nu'uuli, Fagasa, Matu'u and Faganeanea, Two (2) Representatives

House District 13 : Fofu, composed of the village of Leone, One (1) Representative

House District 14 : Lealataua, composed of the villages of Fagamalo, Fagali'i, Poloa, Amanave, Failolo, Agugulu, Se'etaga, Nua, Atauloma, Afao, Amaluia and Asili, One (1) Representative

House District 15 : Ma'upu (Tualata), composed of the villages of Tafuna, Mesepa, Faleniu, Mapusaga Fou, Pava'ia'i) Ili'ili, and Vaitogi, Two (2) Representatives

House District 16 : Tualatai, composed of the villages of Futiga, Itu'au (Malaelo), Taputimu and Vailoatai, One (1) Representative

House District 17 : Leasina, composed of the villages of Aitulagi (Malaelo), Aolau and Aasu, One (1) Representative

The members of the House are elected by popular vote at the polls in the 17 representative districts. There is one delegate from Swains Island elected by the adult permanent residents at an open meeting. He has all the privileges of a member of the House except the right to vote.

The twenty representatives, the delegate from Swains Island each hold office for two years.

Congressman to United States Government:

Established under Title 19, American Samoa Code, the Congressman maintains an office in Washington, D.C., where he presents the views of the Samoan Legislature or Governor to federal departments and agencies. He cannot bind or commit the Government of American Samoa in any manner without specific authority from the Legislature of American Samoa. He is elected to a term of two years and as a nonvoting congressman to the United States.

Department of Local Government: The Department of Local Government, also known as the Office of Samoan Affairs, operates under the authority of Title

3, Section 201, of the American Samoa Code. The department serves as the link between the traditional leaders of the Samoan people and the territorial Government. It is directed by the Secretary of Samoan Affairs. Under the administration of the secretary are three district governors, 14 county chiefs, 53 village pulenu'us (mayors), six leoleo (village police officers) and three district clerks.

The Department of Local Government strives to develop a self-sustaining and self-reliant system of local government consistent with traditional policy. At the local level the Department is very concerned with village problems such as water systems, roads, sanitation, agriculture, schools) and land disputes. It coordinates the community recreation program, supervises the "Samoan-Village" and other recreation areas in Pago Pago Park, coordinates summer youth programs and coordinates island-wide clean-up and beautification campaigns.

District Government: Under the authority of Title 4 of the American Samoa Code, the Territory of American Samoa is divided into districts for purposes of local administration. These districts are separate from Senate and House Districts. The District Government and its sub-divisions are an integral part of the territorial government and are not, by themselves, separate governmental entities. They do not deal directly with any governmental agencies outside of the territorial government. The island of Tutuila and Aunu'u are divided into two districts, known as the Eastern District and Western District.

The three islands forming the Manu'a group constitute one district, known as the District of Manu'a. Swains island is not included in any of the districts and for administration purposes is directly under the Office of the Governor of American Samoa.

The district governors for each district are appointed by the Governor of American Samoa after consideration of recommendations from the respective district council. The term of office for district governors is four years. Each District Governor is responsible for the welfare and good order of the people of his district council and communicates all matters pertaining to his duties with the Governor and the Secretary of Samoan Affairs.

A district clerk is also appointed by the Governor of American Samoa to assist the district governor in the preparation of correspondence, reports and the maintenance of files and records.

The district council is chosen in each district in accordance with Samoan custom. They are charged with all matters of a local nature concerning the district such as cleanliness, water supply, roads and agriculture.

County Government: Under the authority of Title 4 of the American Samoa Code, the three districts are further divided into 14 counties. The Governor of American Samoa appoints a county chief for each of the fourteen counties after consideration of recommendations by the appropriate district governor and county council.

The county chief serves a four-year term. He presides at the meetings of the county council, acts on direction of the district governor, and communicates all matters concerning the council to the district governor. He is responsible for the welfare and good order of the people of the county.

County councils are chosen in accordance with Samoan custom. They are charged with all matters of local nature concerning the county.

Village Government: The Governor of American Samoa appoints from the ranks of the chiefs resident in each village, a chief known as the pulenu'u, to serve for a term of two years.

The Governor makes his appointments after considering the recommendations of the appropriate district governor and county chief. The village council (village fonu) makes nominations to the district governor and county chief.

The village pulenu'u has the following duties:

- a. Is responsible for the welfare and good order of the people of his village.
- b. Presides at the village council meetings and reports the proceedings to the county chief.
- c. Reports to the county chief as to the order of the people of his village, the sanitary condition of the village, the state of the roads and all other

matters to which the village council is requested to attend by the county chief.

- d. Convenes the village council.
- e. Enforces all village regulations.
- f. Keeps all records required by law.

The village council consists of all chiefs and heads of families resident at the village.

They are required to meet at least once each month or at the direction of the pulenu'u. The following rules apply at village council meetings:

- a. All present at the meeting may speak before the council.
- b. The presiding chief shall direct who may speak first if there is a dispute as to who has the floor.
- c. All persons attending the meeting must obey the presiding chief in matters concerning the council.

The village council of each village may enact regulations concerning matters of local or village nature providing they are approved by the Office of Local Government and have been proclaimed publicly and posted in writing.

The Governor may appoint one or more persons in each village as village police officers after consideration of recommendations by the village council. The village police officer, leoleo, is under the immediate supervision of the pulenu'u.

Administration of Swains Island: The local government of Swains Island, consists of a government representative, a village council) a pulenu'u, and a village policeman.

IV. CULTURAL INSTITUTIONS AND GOVERNMENT

A. The Matai System. Traditional Samoan society is organized upon a blending and combination of several principles. These include the principle of hereditary rank. The functions of relationship groups, and the rights and privileges of the organized village community. The social organization can be discussed as it is conceived in theory, but in reality, it is subject to change and reinterpretation because of the

personalities) geography, specific history or outside forces involved.

The cultural institutions are still the strongest single influence in American Samoa. They must, however, continually adopt to the external influences introduced by returning Samoans, television programs, movies, increased number of palagi (Caucasian or outsider) contract workers, and the large variety of consumer goods and products available to Samoans. The ceremonial functions to many of the cultural institutions have been modified to accommodate the normal working hours of employees or other social occasions. Samoan culture has a certain degree of flexibility that allows ceremonial and traditional customs to be modified to suit the current situation. There is a strong feeling among many Samoans that outside influences are causing the younger generation to become apathetic towards the matai system and its impact is not known, but it may have a great impact in the near future.

Aiga (Family Unit) and Matai (Chief). The basic unit of Samoan society is the aiga, a word variously translated into English as "extended-family", "family group", "patriarchy", or "clan". Any aiga consists of a group of people related by blood, marriage, or adoption, varying in number from a few to 200, who acknowledge a common allegiance to a particular matai. The Matai possesses authority over the members of his aiga and regulates their activities, whether in agriculture, fishing, or the reception of guests. Family resources are similarly under his direction. Traditionally, the matai consults the alga before exercising his authority. Consultation and discussion is a highly developed practice at every level of Samoan society.

These family units create a close knit group with an intense local pride and a close community of interest. It is common for a Samoan, when asked to give a family name for identification, to give the name of his matai who may not be his biological or natural father.

The Fa'alupega: The village is a combination of hundreds of people in these various family units. Socially, each village is defined by its fa'alupega, which contains a highly formal greeting of its principal matais. The correct place and dignity are accorded to each; and the relationship of local matai titles to the broader lineage structure of Samoa is

made explicit. The possession of such a fa'alupega is in effect, the required demonstration of a particular village's autonomy. It provides a conventional record of the village's history, in terms of kinship and social status, and defines the constitution of its fonofono (village council). The appropriate fa'alupega are recited on all formal occasions, such as the meeting of the fonofono or the reception of guests from another village. It is the pride and duty of the orators to know them for the whole of Samoa.

Village Fonofono (Council of Chiefs). The most important group in the village is the fonofono or council of chiefs, which is composed of the matai of the village, and is responsible for the general government of the village community. At a meeting of the fonofono, the members' seating positions are determined in accordance with the importance of the matai title which each holds. Each title is assigned a rank and a fixed place in an ideal circular plan, the fixed points of which correspond to the posts in a Samoan round house. Men holding the leading titles sit in front of particular posts, the others occupy the spaces between. This order also determines the right to speak.

When a matai of high title expresses an opinion, those of lesser standing cannot with propriety dissent. However, since a large proportion of villages possess several titles of higher standing than the rest, this convention does not commonly lead to the creation of autocracy. Moreover, the Samoan conception of leader as a spokesman for, and representative of the group, has created the habit of informal consultation.

Even where this procedure is not used effectively, the Samoan convention of debate permits attitudes to be made clear without the open expression of disagreement. The relative rigidity of the social structure and its formal expression in the structure of the fonofono is thus much mitigated in practice.

During the meeting, matters of general interest or concern are discussed; regulations regarding the conduct of village affairs made; and decisions reached as to the punishment of offenders of village customs and regulations. The fonofono allows Samoan society to maintain law and order and social integration at the village level. The system is a sophisticated one. It provides channels for the attainment of personal satisfaction by the participants as well as the procedures for the maintenance of

social and political stability. Structural rigidity and operational flexibility are effectively combined.

Ali'i (Chief) and Tulafale (Orator or Talking Chief). The traditional tribal structure of the matai system is divided by function into Ali'i and Tulafale. In the affairs of their own families, the Matai has the same responsibilities whether they are chief or orators; but in the Fonofono and in public affairs, the functions of the two groups are complementary. The chief is the titular leader; the ultimate repository of authority:

The orator is the executive agent, who performs for the chief a variety of duties which are contrary to propriety for the chief to perform for himself. The orator is the repository of genealogical knowledge, history, and legend; he makes h behalf of the village, he organizes the ceremonial distribution of food; and he acts as master of ceremonies when a chief's title is being bestowed.

The relative influence of chiefs and orators differs from place to place, depending upon genealogical structure, upon time and circumstances, and upon personality. But the differences of function between the two groups is a constant factor. It should be understood that based upon this genealogical order of classifications, there exists a host of sub-chiefs, and sub-orators, that may number several thousands matais. This confusion of sub-chiefs and sub-orators has given rise to western translation such as a high chief, high talking chief, chief and talking chief but it is impossible to say that one chief is "higher" than another without a knowledge of the exact circumstances for which the determination is being made. The higher ranked alibi or paramount high chiefs are classified by reason of the genealogical order under the traditional Tusi of Fa'alupega (Book of Traditional and Formal Titles and Greetings). It is difficult to set forth a definitive description of a typical village hierarchy because each village varies immensely from the others. It is customary for new governmental programs, to recognize the traditional genealogical titles of the villages or districts which participate in any development project or program.

Election of a Matai: The right of electing a Matai is in most cases vested in the family as a whole. This group includes both members by descent and persons connected with the family by marriage or adoption who are living as members of the family. In practice,

however, family members living in another village and not participating in the affairs of the family are not usually expected to take part in the discussions. In reaching their decision, the members of the family bear certain customary considerations in mind. The eldest surviving brother of the previous holder before his death as to who should be his successor. But, fundamentally, the members are free to make their own choice. They are concerned with ensuring the amicable and effective control of the family's affairs and with the maintenance of its standing in the community. Special attention is paid to a candidate's past record of loyalty to the family and service to the previous Matai.

The Role of the Matai: The Matai requires respect for his position, and in turn, accords respect to his juniors. He maintains order and discipline and adjudicates all intrafamily land without the consent of the family. Since his position is elective and not hereditary, he may be deposed if his administration displeases his family members.

Editor's Note: This passage read as follows in the 1978 version of Annex B: The eldest surviving brother of the previous holder of the title is entitled to special consideration. Also, to be taken seriously is a declaration by the previous holder before his death as to who should be his successor.

Editor's Note: This passage read as follows in the 1978 version of Annex B: He maintains order and discipline and adjudicates all intra-family disputes. He is trustee of the family lands, but he is not the owner. Although land cannot be sold without his consent and the approval of the Governor of American Samoa, he cannot dispose of family land without the consent of the family.

Other Village Groups: The untitled men in a village belong to the Aumaga. The Aumaga gives service to the Matais and they work on community projects, i.e. clearing land, planting crops and group fishing. The women who are members of the local families by birth or adoption belong to the Aualuma, and the wives of the Matai to the Potopotoga o Feletua ma Tausi. The wives of untitled men form a less clearly defined group Fafine Laiti which assist, and sometimes meet with the Faletua ma Tausi group. Each group serves a village function which benefits the community, Duties range from weeding taro

patches, to weaving mats and le Toga (fine mats), to inspecting village plantations.

The Tama Famine group recognizes that special relationship between brothers and sisters. Brothers have an obligation to consider, the interests of their sisters and their sisters' children. The sisters are held to have the power of cursing their brothers and their descendants if these obligations are neglected. This relationship and members of an aiga who are related to it through a female are recognized to exercise great influence, through the power of veto, on family decisions regarding the choice of a matai or the alienation or assignment of land.

The Role of Religious Groups: The religious institutions in American Samoa play an important but varied influence in the community. The major religions in American Samoa are Catholic, Samoan Congregational Christian Church, Methodist, and Mormon. A priest or minister is accorded a privileged position in the village community and is equal in status to a high chief. They may make village rules that affect the conduct of the villagers on Sunday, i.e., no one may swim in the sea on Sunday, and no one may cause a disturbance while the church is in service. The Church is also a landowner by reason of gifts and purchases of real property. The amount of influence of the church is highly dependent on the personality of the priest or minister.

Suggested Protocol for Approaching the Samoan Community.

- a. Contact the Department of Local Government and request that a representative accompany the program official when conflicting the District Governor to ask for assistance in arranging the itinerary for the official.
- b. Give advance notice to the District Governor and request the assistance of an able orator to accompany the program official to the particular village and to arrange the formalities with the village fono.
- c. Have the District Governor's representative request that the village fono select the matai or matais that will be involved with the particular program.

- d. Develop a follow-up system to allow the program official to return to the district or village for future contacts on a less formal basis.
- e. Always be sure to keep all the matais and officials involved in any development program briefed on the status of their particular projects.

B. The Samoan Land Tenure System: American Samoa presently has three characters of land holding: (1) communal land, (2) individually owned land, and (3) freehold land. Prior to the creation of freehold land grants in 1900, all lands in American Samoa were designated as communal lands. The majority of land is still under communal control. The character of some land has changed from that of communal control to one of individual control, a new character of land created by the courts.

Communal or Native Held Lands: Communal lands are characterized as lands that are held under Samoan customs and subject to the pule (authority) of the matai. Pule, a general Samoan word meaning control does not imply ownership. It denotes the responsibility for allocating land, working it, and safeguarding it for future generations. The matai at the head of an aiga has been elected to at least one title and sometimes to several. Each title bestows pule over family lands.

Assignments of land by a matai for a house or a plantation for a family member is for, that person's lifetime and cannot be revoked except for good cause; i.e., refusal to render services to the matai. The permission to use family lands given or assigned to family members continues as long as family members render a service to the matai and use it in accordance to Samoan customs. A matai may use produce, profits and rents from communal land in which he has had interests by virtue of his title in any manner he wishes, and members of a family may not claim an interest in property purchased with such profits.

The land holdings of each matai usually consist of several non-continuous and oddly shaped plots and are well-known throughout the village. Where a patch has recently been cleared for a garden or plantation, its limits are readily recognized, but in older plantations or work plots, this proves more difficult. Often the boundaries of each fragment are dependent on natural features such as a end in a stream bed, a

coconut stump, an indentation in the ground, a large boulder or a tree; but these established limits are as definite to the Samoan pule holder as if they had been surveyed and fixed accurately on a map. In this respect, they are far less vague and present fewer problems than the boundaries of village land.

The Samoan sense of belonging to a community is most evident in the ownership of land. Land is the aiga's most precious possession, but paradoxically little care is given it, and well developed agricultural forms are not practiced. An interesting aspect of land character is the village malae which is equivalent to a village green or town plaza. The main is located in the center of the village and is surrounded by the matai guest houses or fales which are organized based upon rank of the matai. The malae is used for village social activities and for sports events, and is maintained by all the families in the village. Each matai is given rule over a section of the malae according to rank but usually in front of his guest fale.

All alienation of communal land must be reviewed by the Land Commission and approved by the Governor. All alienation of communal land is restricted to Samoans of at least one-half Samoan blood. All leases for communal lands are limited to 30 years and must be posted for 30 days, approved by the Land Commission, and approved by the Governor of American Samoa prior to it becoming effective.

Individually Owned Land: When an individual has cleared virgin bush or occupied land without objection by others and there is no evidence that land is communally owned, the land can be claimed as individually owned. The character of individually owned land is an estate which subjects it to the restrictions on alienation of lands to Samoans of at least one-half Samoan blood. It can be described as an estate which is lesser in character to freehold or fee simple estates, which are alienable to any person or entity. It is a greater estate than communal land for the reason that it can be alienated to a Samoan with at least one-half Samoan blood, but does not have to be reviewed by the Land Commission and approved by the Governor of American Samoa.

Freehold Land: Freehold land or fee simple land is a character of land that was created by the court grants of the Supreme Court of Western Samoa prior to 1900 under the German administration of Western Samoa.

Freehold lands represent a very small portion of the total land area of American Samoa. The freehold lands are primarily held in probate estate of the original grantor who often has several hundred heirs.

Government, Church, and School Held Lands:

The non-alienation regulations do not prohibit the conveyance and transfer of native lands for governmental purposes to the United States Government or to the Government of American Samoa and, upon approval of the Governor, to a recognized religious society or for school purposes.

Incorporation of Villages: The Revised Code of American Samoa does not have any provision for the incorporation of a village into a municipal corporation which organizes the inhabitants of a prescribed area must be established under the authority of legislature.

Samoan Land Tenure: In order to fully understand the impact of Samoan land tenure on development, one has to determine whether the land tenure is communal land, individually owned land or freehold land. The approach to each land tenure system represents distinct differences that are crucial to success of any development plan in American Samoa, **Communal Land Tenure:** Introduction of any development on communal land will involve a highly complicated and intricate process of meeting the proper matai to have him exercise his pule over the use of land under his jurisdiction to allow development. The Land Commission and Governor must give written approval to any lease, easement, license or other documents that affect communal land or any part thereof. Some development will most likely involve boundary disputes over the pule of matai. Boundary identification for the development on communal land becomes more acute in a family that has not elected a matai or if there is a contested matai that is in the process of court litigation. In these situations, all the senior male members of the family must be consulted prior to any development action being approved.

Individually Owned Land Tenure: The government restrictions on communal land do not exist in the development of land registered as individually owned land. Except for the alienation restriction, the owner is free to negotiate licenses or easements directly with any person or other entity.

Freehold Land Tenure: The freehold estate preferred character of land in American Samoa, but it is the most limited. It includes less than 3 to 4 percent of the entire land area in American Samoa. All freehold lands are held -to probate estates of the original grantee . They are subject to the claims of the heirs in common who may number several hundred. The Hunkin Estate is the most accessible to development, by reason of the appointment of three trustees empowered to lease land belonging to the estate, but the trustees are restricted from any alienation or sale of these lands. All other probate estates holding freehold lands remain in a state of flux and uncertainty.

Constitutional Restrictions on Land Use: The Constitution of American Samoa and the American Samoa Code do not have a provision as to the ownership or pule over the surface underground water. The Code provides that the laws in full force and effect in American Samoa include the Constitution of American Samoa; such parts of the Constitution of the United States of America and such laws of the United States of America as shall, by their own force, be in effect in American Samoa; the American Samoa Code; and as much of the common law of England as is suitable to conditions in American Samoa and not inconsistent with the other laws applicable to American Samoa.

Samoan customs are preserved by law if they are not in conflict with the laws of American Samoa or the laws of the United States. An exception allows that the village, county and district councils consisting of hereditary chiefs and talking chiefs retain their own form or forms of meeting together to discuss affairs of the village, county or district according to their own Samoan customs.

The Constitution of American Samoa provides that no change in the law respecting the alienation or transfer of land or any interest therein, shall be effective unless it is approved by the two successive legislatures and by two-thirds vote of the entire membership of the House of Representatives and the Senate and approved by the Governor.

It would appear that without any statutory provision to distinguish water rights of landowners, the common law principles may apply. The general common law principles give riparian water rights to

the landowner or abutting landowners, subject to any public domain proceedings or purchase and sale of the real property by the government. There is an absence of court cases in this area and riparian rights have not defined application to groundwater or to amounts of water available under these rights.

Territorial Government Regulations on Acquisition of Real Property: On June 13, 1974, the Government of American Samoa adopted the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

The Land Acquisition Chapter of the regulations set forth the procedures for the acquisition of real property. The regulations are given below to emphasize the procedures that should be followed by the Government of American Samoa.

Reg. 2.01 - PURPOSE: This chapter prescribes the acquisition of real property.

Reg. 2.02 - REAL PROPERTY ACQUISITION PRACTICES:

“(a) In acquiring real property the Government will to the greatest extent practicable:

“(1) make every reasonable effort to acquire real property expeditiously through negotiations;

“(2) before the initiation of negotiations have the real property appraised and give the owner or his representative an opportunity to accompany: the appraiser during the inspection of the property;

“(3) before the initiation of negotiations establish an amount which is believed to be just compensation for the real property and make a prompt written offer to acquire the property for that amount. In no event will the just compensation offered be less than the Government’s approved appraisal of such property provided however, when it is shown by appropriate means that a project will result in a direct benefit to the person, family, or village having custody of lands required by the Government for such programs or project, and where such benefit will at a minimum equal the value of- lands

to be acquired or damaged, such benefit to the owner will constitute just compensation; and provided further, in all cases the Government shall compensate owners for immediate loss of crops, food producing trees, and manmade improvements; and provided further the determination of equal value in benefits for the property owners in writing in the presence of the Secretary of Samoan Affairs or his designee. At the time the Government makes an offer to purchase real property, the owner of that property will be provided with a written statement of the basis for the amount estimated to be just compensation for the property any increase or decrease of the fair market value caused by the public improvement for which the property is acquired prior to the date of valuation will be disregarded (other than that caused by physical deterioration);

“Editors Note: this passage read as follows in the 1978 Version of Annex 13: and provided further the determination of equal value in benefits for the land acquired or damage must be agreed to by the property owners in writing in the presence of the Secretary of Samoan Affairs or his designate.

“(4) Before requiring any owner to surrender reasonable expenses of litigation, in line with possession of any real property: Section 304, Uniform Relocation Assistance and

“(i) pay the agreed purchase price; or Real Property Acquisition Policies Act of 1970;

“(ii) deposit with the court, for the benefit of the owner, an amount not less than the just compensation determined by the government’s approval appraisal of the property; or

“(iii) pay the amount of the award of compensation in a condemnation proceeding for the property; Editors Note: This passage read as follows in the 1978 version

“(5) If interest in the real property is to be of acquired by exercise of power of eminent

domain institute formal condemnation proceedings to prove the fact of the taking of this real property; and,

“(6) If the acquisition of only part of the property will leave its owner with an uneconomic remnant, offer to acquire that remnant.

“(b) In acquiring real property to the greatest extent practicable, the Government will not:

“(1) schedule a construction or development of the public improvement that will require any person lawfully occupying real property to move from a dwelling, or to move his business or farm operation, without giving that person at least 90 days written notice of the date he is required to move; or

“(2) if acquired property is rented to the former owner or tenant for a short term or subject to termination by the Government on short notice, charge a rent that is more than the fair rental value of the property to a short term occupant; or

“(3) advance the time of condemnation; or

“(4) defer negotiations, condemnation or deposit of funds in court for use of the owner to agree to a price for his property;

“(5) take any course of action to compel an owner to agree to a price for his property.

“(c) Should a court determine condemnation was unauthorized or the property owner obtain a judgment in the nature of inverse condemnation or should the Government abandon condemnation, then the owner shall be reimbursed for reasonable expenses of litigation, in line with Section 304, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

“(d) Nothing in these regulations should be construed to preclude a donation by an owner after his property has been appraised and the full amount of the estimated just compensation has been tendered to him”.

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1978

-ANNEX C-

DISASTER ASSISTANCE COORDINATION COMMITTEE

DISASTER ASSISTANCE PLANNING & COORDINATION OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1978

-ANNEX D-

ALERT NOTIFICATION PROCEDURES

DISASTER ASSISTANCE PLANNING & COORDINATION OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

	Bus. Phone	Home Phone
Director of Public Safety	633-1111	688-7147
Office of the Governor	633-4116	633-4272
Fire Chief	633-4128	633-4911
Airport Manager	688-9101	688-7710
Director of Public Works	633-4141	633-5812
U.S. Coast Guard	633-4733	688-7694
Director Port Administration	633-4251	688-7694
Director of Education	633-5237	633-4720
Director Medical Services	633-1222	633-5685
Director Marine Railway	633-4123	688-7188
Director Material Management	633-5131	633-4794
President Community College	688-9155	633-4864
Office of the Attorney General	633-4163	633-496-
Director Economic Planning	633-5156	688-9638
Director of Tourism	633-5187	633-4067
Director of Administrative Services	633-4155	688-9197
Director of Agriculture	633-5276	688-7634
Secretary of Samoan Affairs	633-5201	633-5885
Office of Samoan Information	633-5490	633-4016
Manager of American Company Co.	633-4485	633-4935
Manager of Star Kist Company	633-4231	633-4660
Manager of Van Camp Seafood Co.	633-5273	633-4600
Manager of Standard Oil Co.	633-5331	

ALTERNATES

1. Public Works

AMERICAN SAMOA ADMINISTRATIVE CODE – 2023 EDITION

- 2. Port Administration
 - 3. Education
 - 4. Marine Railway
 - 5. Administrative Services
 - 6. Manpower Resources
- General Manager Construction Div.
 Assistant Director
 Special Ass't for Public Affairs
 Yard Master or Dock Master Implementation
 IPA Grant Coord.

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1987

-ANNEX E-

COMMUNICATIONS

TERRITORIAL EMERGENCY MANAGEMENT
COORDINATION OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

COMMUNICATIONS

I. PURPOSE

This annex describes the Communications systems available for use during disaster warning, reporting, rescue, and relief operations.

II. GENERAL

Communications between American Samoa and the outside world consist of satellite voice circuits telex network between American Samoa and Hawaii/U.S. Gateways. The American Samoa Government has leased several of these circuits, with intentions to buy Earth Station.

Communications between various points in American Samoa (including the outer islands) consists of a standard commercial telephone system, plus TEMCO UHF Radio, 2 channel system.

Separate radio-dispatch nets are maintained by the Police Department and Department of Communications and ASPA.

The Port Administration maintains normal ship to shore and distress frequency channels on VHF and

HF. Radio communication is also maintained with Swains Island on communication center HF Net.

The U.S. Coast Guard maintains VHF communications which include ship to shore and distance frequencies in both the rescue boat and the Base Station. Hand held portable transceivers and Citizens Band (CB) transceivers are also maintained.

Amateur (HAM) Radio Operators are also available for emergency use.

III. MODE OF OPERATION

Initial warnings are normally passed to the Commissioner of Public Safety and office of the Governor via telephone. The Commissioner of Public Safety, when necessary, initiates the Alert Notification Procedures (ANNEX D). At home notifications are made during off-duty hours using both telephone and police cars as necessary.

All communications will be controlled from the Emergency Operations Center. It may be necessary to temporarily remove some radio and landline capability from the Communications Center building until such time as equipment is installed in the Emergency Operations Center.

The primary radio net during all emergency or disaster operations will be the Police dispatch and TEMCO UHF Radio Frequencies system controlled from the Emergency Operations Center. The use of the Public Works and Medical Health Services Systems by the Emergency Operations Center will be on as required basis. (None in operation at this time)

During any emergency or disaster operation it will usually be necessary to improvise in order to meet urgent communications needs. All departments, agencies and organizations involved in the use of this plan are required to report any such variations to the Emergency Operation Center immediately.

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1988

-ANNEX F-

DAMAGE ASSESSMENT AND REPORTING

TERRITORIAL EMERGENCY MANAGEMENT OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

DAMAGE ASSESSMENT AND REPORTING

I. PURPOSE

The purpose of this annex is to establish the organization and procedures for rapid assessment and reporting of disaster damage.

II. REFERENCES

- A. FDAA Disaster Assistance Program Eligibility Handbook 3300.6 Chapter 3, December 1975.
B. FDAA Region IX Individual Assistance Damage Assessment, January 1978.
C. FDAA Region IX Public Assistance Damage Assessment, May 1976.

III. INTRODUCTION

Damage assessment is the immediate and rapid collection of general information on the nature, severity and location of damages resulting from a disaster incident. It serves several critical purposes:

- A. It provides all levels of the Government with the information needed to determine what response action should be taken.
B. It provides the basis for the Governor’s decision to invoke his emergency authority and to request Federal assistance.
C. It is the primary factor in the determination of a Presidential declaration of an emergency or major disaster condition under Public Law 93-288.

Damage assessment may or may not involved joint Federal Territory team. In the event of a catastrophic event of major proportions, the assessment may be accomplished after the Governor’s request.

Damage assessment is not synonymous with Damage Survey. Damage Survey consists of the detailed inspection, evaluation, and estimation of the cost to

restore or replace damaged facilities to their pre-disaster condition, and is usually accomplished only after a Presidential Declaration has been made. Damage Surveys are conducted by Federal and Territorial specialists who prepare separate reports for each eligible project.

IV. ORGANIZATION & RESPONSIBILITIES

A. The Damage assessment team will be made up of representatives from the following Government of American Samoa Departments and Agencies.

- 1. Department of Public Safety Coordinator 1
2. Department of Health Doctor 1
3. Department of Public Works Civil Engineer 1
1 Highway Specialist
1 Water/Specialist
1 Building Damage Specialist
4. American Samoa Power Authority Power Specialist 1
5. Department of Agriculture Agriculturist 1
6. Development Planning Office Representative 1

B. The Commissioner of Public Safety, as the State Coordinating Officer (SCO) will provide the Team Coordinator from the Disaster Assistance Coordination Division. It will be his responsibility to insure that the team is properly organized and trained to perform their duties in an accurate and expedient manner.

V. MODE OF OPERATION

A. Damage Assessment begins as soon as possible after the onset of a disaster and is completed as quickly as possible. The damage assessment team will be notified by the SCO when an emergency condition is imminent or exists within the Territory. Team members will

immediately assemble in the Emergency Operation Center (EOC) for briefing and transportation arrangements.

B. Upon arrival at the disaster area starting point the team will determine the severity and magnitude of the damage by considering the following:

1. Casualties
2. Area affected
3. Damage to private property
4. Damage to ASG or public facilities
5. Number of persons requiring temporary housing
6. Number of persons unemployed as a result of the disaster
7. Adequacy of relief efforts
8. Estimate of need for Territorial and Federal Assistance

C. Based upon initial observations the Team

Coordinator will make an immediate oral report to the SCO (and to Governor, if necessary) as to the overall impact of the disaster incident to include supplemental rescue or disaster relief requirements. This initial report will be based upon limited reconnaissance and is not a substitute for a comprehensive assessment. The damage assessment summary report (Tab F-1) will then be completed by the Team Coordinator. This data will be based upon the team’s findings as reflected on worksheets.

D. Should the Governor request Federal assistance under the provisions of PL 93-288, the team will, in cooperation with the Federal Coordination Officer and his staff accumulate the required Damage Survey Report Data for Project Application in accordance with FEMA Handbook 3300.5 and 2200.6.

VI. TRAINING

Development of an accurate and effective damage assessment capability is dependent upon the skills of the selected individuals and the training received. It is imperative the Team Coordinator conduct sufficient

meetings, training sessions, and exercises of the entire team so as to insure proficiency. Department Heads responsible for appointing team members will insure that the individual is qualified and well aware of his responsibility to maintain proficiency in damage assessment techniques and procedures.

DAMAGE ASSESSMENT SUMMARY REPORT

VILLAGE _____ DISTRICT _____ _____ DATE _____ 1A. No. of Dead _____ 1B. No. of Injured _____ 2A. No. of Private Dwellings Damaged _____ 2B. No. of Private Dwellings Destroyed _____ 2C. \$ _____ 3A. No. of Business Damaged _____ 3B. Destroyed _____ 3C. _____ 4A. Crop Damaged Percent _____ 4B. Value of Crop Loss and Damaged \$ _____ 4C. Types _____ 5A. Livestock loss and Damaged Percent _____ Cost \$ _____ 5B. Value of Loss and Damaged \$ _____ 5C. Types _____ 6A. Emergency Feeding completed.....Cost \$ _____ 7A. Emergency Feeding anticipated.....Cost \$ _____ 7B. Types of Food _____ Debris Clearance — Estimated Cost \$ _____ Protective Measures — Estimated Cost \$ _____

Road Systems	\$ _____
Water Control Facilities	\$ _____
Public (Gov't) Buildings and Related Equipment	\$ _____
Public (Gov't) Utilities	\$ _____
Government Facilities under construction	\$ _____

Did it contain: sewage _____ chemicals _____?

- What are the types of home construction?
Wood frame _____
Concrete _____
Other _____
- Did you notice mud, silt and/or debris in and out around many of the homes?
Yes _____ No _____
- What types of small businesses were affected?
Warehouses _____
retail trade _____
Other _____
- Give the names and locations of damaged factories or large businesses which appear to employ more than 10 people.
- Did you find there was debris, silt or erosion to farm and damage to fences, loss of livestock, poultry or crops? Yes _____ No _____
- List any unusual conditions or other comments you feel would be helpful in understanding the nature and extent of damage in the area you assessed.

ANNEX F

WORKSHEET

DAMAGE ASSEMENT PUBLIC
(GOVERNMENT SECTOR)

Estimator _____
Date _____

- Location of Damage _____
- Description of Damage _____

3. Estimate of costs to repair or replace extent possible)

(Itemize elements to the extent possible)

_____ \$ _____
_____ \$ _____

Estimate of Original Cost \$ _____

Estimate of Replacement Cost \$ _____

Insurance Coverage (if any) \$ _____

- Which utilities are not working?
Telephone _____ Water _____ Electricity _____
- How high was the water in most of the houses?
_____ feet.
Was the water: slow rising ___ fast rising
___ rapid current ___ fresh ___ salt _____?

TERRITORY OF AMERICAN SAMOA
DISASTER ASSISTANCE PLAN

1988

-ANNEX G-

FEDERAL DISASTER ASSISTANCE
PROCEDURES

TERRITORY EMERGENCY MANAGEMENT &
COORDINATION OFFICE

DEPARTMENT OF PUBLIC SAFETY

AMERICAN SAMOA GOVERNMENT

FEDERAL DISASTER ASSISTANCE
PROCEDURES GUIDE

A. INTRODUCTION

The purpose of this guide is to assist the Department Heads and local government officials in coordinating their efforts with the Federal Emergency Management Agency (FEMA). After a Presidential declaration of major disaster or emergency, federal assistance under PL 93-288 will be available to the American Samoa Government.

The American Samoa Government will utilize all its internal resources, to cope with disaster, and will request, federal assistance at such time as effective response is beyond the capability of the Government.

In part, the guide contains materials extracted from various disaster assistance documents. It should not be considered a substitute for official laws, rules and regulations such as those cited in the Reference and Authorities section of the Disaster Assistance Plan. Hud Handbooks 3300.5 and 3300.6 and Forms therein will be utilized for all references in this guide.

B. DAMAGE ASSESSMENT AND REPORTING

The State Coordinating Officer (SCO) orders a damage assessment as soon as possible after the onset of a disaster and reports the results to the Governor. Instructions for Damage Assessment and Reporting are contained in Annex F.

C. REQUEST FOR DECLARATION

When a determination is made to request a presidential disaster on emergency declaration, the SCO will prepare the request, (Tabs 2 or 3) in message form addressed to the President through the Regional Director, FEMA. This message will be confirmed by official letter request within twenty-four hours. As part of a Major Disaster request, an Individual and Family Grant Program and/or Temporary Housing Assistance Program may be specified. Within seven days after a Major Disaster declaration the SCO will request approval from FEMA (Tab 4) to implement the approved administrative plans for the Individual and Family Grant Program and/or Temporary Housing Assistance Program in the disaster area.

D. FEDERAL-TERRITORIAL AGREEMENT

The Territory has a standing agreement with the Federal Government (Tab 5) which contains the terms and conditions under which federal assistance will be provided. For each presidential declaration an amendment would be drawn up detailing the specifics for that particular occurrence. (Tab 6)

E. ASSISTANCE AVAILABLE

1. Individual Assistance

a. Individual Assistance Provided after an Emergency Declaration by the President. Providing assistance to individuals begins when the need is identified and prior to any declaration. It is the responsibility of the Territorial Government assisted by voluntary relief organizations. The FEMA will provide or reimburse the Territory for mass care (medical care, emergency shelter and emergency provisions of food, water and medicine) only if the Regional Director of FEMA determines that relief organizations are not providing the necessary items or not providing them in sufficient quantities.

b. Individual Assistance provided after a Major Disaster Declaration by the President. The possible mass care assistance will be available as outlined above. In addition, the Individual and Family Grant Program, and the Temporary Housing Program Assistance may be provided by FEMA. The administrative plans for these two types of assistance included as Annexes I & J of the Disaster Assistance Plan.

2. Public Assistance

a. Public Assistance provided after an Emergency Declaration by the President. Assistance may be provided by Federal agencies when requested by the SCO acting as the Governor's authorized representative. Such assistance may be technical or may be in the form of advisory personnel to assist local government in the performance of essential community services, warning of further risks and hazards, public

information and assistance in health and safety measures.

Assistance may also be provided through Federal agencies by making equipment, supplies, facilities, personnel and other resources available to Territorial agencies and local governments. This also includes the donation or fencing of surplus Federal equipment and supplies.

Emergency work commences as soon as the need is identified and prior to any declaration. It is normally performed by Territorial or local personnel. Eligible work (Tab-1) performed will be reimbursed by FEMA after an Emergency declaration.

FEMA may provide emergency debris clearance limited to that necessary to save lives, protect property, public health and safety. Such assistance includes clearing debris from roads and facilities as necessary for the performance of emergency tasks and for the restoration of essential services. FEMA may provide reimbursement for emergency protective measures such as search and rescue, demolition of unsafe structures, warning of further risk and hazard and other actions necessary to remove or reduce immediate threats to public health and safety of public or private property when it is in the public interest. FEMA may provide funds for a feeding program for the population of a disaster area when the situation is such that the means for growing and harvesting have been temporarily disrupted or have been destroyed. This is considered a protective measure.

FEMA may provide reimbursement for restorative emergency repairs to essential utilities and other essential facilities as necessary to provide for their continued operations, i.e., such work as emergency bridge work, emergency road detours, utilities tie-ins and emergency building repairs. FEMA may provide temporary communications during or in anticipation of and emergency or major disaster and may

make them available to Territory officials on a temporary basis until essential emergency communications needs of the community are met.

Reimbursement may be provided for the cost of emergency public transportation to government offices, supply centers, stores, post offices, schools, major employment centers and such other places as may be necessary in order to enable the community to resume its normal pattern of life in the affected area;

- b. Public Assistance provided after a Major Disaster Declaration by the President. In addition to the assistance provided after an Emergency declaration, PL 93-288 provides that upon a declaration of a Disaster the Federal Government may pay the emergency costs as well as make contributions to help repair, restore, reconstruct or replace damaged public facilities, including the public facilities under construction at the time of the major disaster. They may also make grants to help repair, restore, reconstruct or replace private non-profit education, utility, emergency, medical and custodial facilities (including those for the aged or disabled) damaged or destroyed by a major disaster.

Public Law 93-288 authorizes the President to make loans to any government which has suffered substantial loss of tax and other revenues as a result of a major disaster.

Loans will be based on need and shall not exceed 25% of the annual operating budget of government for the fiscal year in which the major disaster occurred.

- c. Direct Federal Assistance, i.e., Work Performed by Federal Personnel (After either an emergency or major disaster declaration). If, in unusual circumstances, it is beyond the capability of the American Samoa Government to do or to contract for emergency work after an emergency or major disaster declaration, the Territory may request direct Federal assistance. In

such cases, there are no financial transactions. Request procedures are in Hud Handbooks 3300.5 and 3300.6. The request must be submitted to the FEMA within 30 days following an Emergency declaration or within 90 days following a Major Disaster declaration. The American Samoa Government is responsible to assist performing Federal agencies in all support and local logistical matters in the same manner as a private owner would in his relationship to a performing contractor. These matters would include the securing of local building permits and rights of entry, control of traffic in the interest of safety and public welfare and other matters relating to compliance with local building or construction laws and ordinances.

The American Samoa Government must accept the design before work is initiated and must signify acceptance of completed work at the time of the joint final inspection. It provides without cost to the Federal government all land, easements and rights-of-way necessary to accomplish the approved work and must agree to indemnify the Federal government against any claims arising from the work.

- d. Long-Term Economic Recovery Assistance: FEMA provides additional assistance for the economic recovery, after the period of emergency aid and replacement of essential facilities and services, of any Major Disaster area which has suffered a disruption of its economy of sufficient severity to require (1) assistance in planning for development to replace that lost in the major disaster; (2) continued coordination of assistance available under Federal aid programs; and (3) continued assistance toward the restoration of an employment base. Additional assistance may be provided for disaster recovery planning, public works and development facilities grants and loans, loan guarantees and technical assistance. The need for such additional assistance will be determined by the Department of Public Safety.

- e. Public Assistance Project Management. The Director of Public Works is responsible for project management, contracting in the name of the ASG, and contract management of all work performed under categorical or flexible funding arrangements. He is responsible for management of projects to remove timber from private lands where it is in the public interest to do so. He may reimburse owners who remove such timber under contract for the actual removal expenses not to exceed the amount such expenses exceed the salvage value of the timber removed. Through the SCO, he requests Federal equipment, if required, to be used in disaster recovery work and is responsible for its distribution and use.

F. INSTRUCTIONS FOR OBTAINING FEDERAL FINANCIAL ASSISTANCE UNDER PUBLIC LAW 93-288 FOR PUBLIC PROJECTS (See Hud Handbooks 3300.5 and 3300.6)

- 1. General. Eligible applicants include the entire Territory of American Samoa.
- 2. Private Non-Profit Facilities (May be approved for Categorical Grant only). Evidence is required that the non-governmental agency or entity has applied for and currently has in effect from the U.S. Internal Revenue Service a ruling letter granting tax exemption under Section 501 (c), (d) or (e) of the Internal Revenue Code of 1954.
- 3. Project Applications.
 - a. Emergency Declaration. On behalf of the applicant, the Commissioner of Public Safety, (the Governor's authorized representative) submits project applications for emergency work. Attached must be a resolution which appoints him as agent for Governor. Emergency work can be under any of the categories (A thru I) described in paragraph 9 below. Project applications must be submitted to

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FEMA within 30 days following the declaration.

b. Major Disaster Declaration. Project applications for emergency and permanent work under a Major Disaster declaration must be submitted to FEMA within 90 days after the declaration.

4. Categorical Grant. A grant is based on applicant performing work approved in the project application. It is used for:

a. Debris clearance and emergency work if approved amount of the project application is \$25,000 or more.

b. All facilities under construction, and

c. All private non-profit facilities.

5. Grant-in-Lieu Projects (Categorical Grants Only). If an applicant wishes to construct a larger or more elaborate replacement in lieu of authorized work, he may apply for grant equal to what estimated to repair or replace the predisaster structure. Separate requests will be submitted for each such grant.

6. Flexible Funding. An applicant may elect to receive, in lieu of a categorical grant, a contribution based on 90% of the Federal estimate of the total cost of repairing, restoring. Reconstructing or replacing all damaged public facilities owned by it within its jurisdictions. Funds may be expended either to repair or restore certain selected projects damaged as a result of a Major Disaster or to construct new facilities which the applicant determines to be necessary to meet his need for governmental services or functions in the disaster area. Regional Director, FEMA, must approve projects for flexible funding.

7. Small Project Applications (In-Lieu Contributions). If the total estimated cost for one applicant for debris clearance, emergency and permanent work is less than \$25,000, 100% in-lieu funding is mandatory. Should a supplement be filed

which makes the total amount \$25,000 or more, the entire grant reverts to categorical.

8. Time Limitations. Time limitations for Federal assistance for public projects begin at the time of declaration of an Emergency or Major Disaster and shall terminate upon expiration of these prescribed time periods:

	Initiation Deadline	Completion Deadline
a. Debris Clearance	30 days	180 days
b. Emergency Measures	30 days	180 days
c. Permanent Restoration Project		18 months

(Regional Director, FEMA, may require a completion schedule for his approval).

Project Applications (Major Disaster) must be submitted within 90 days of declaration.

Project Applications (Emergency) must be submitted within 30 days of declaration.

9. Categories of Eligible Work.

Category A - Debris Clearance

Category B - Protective Measures

Category C - Road Systems

Category D - Water Control Facilities

Category E - Public Buildings and Related - Equipment

Category F - Public Utilities

Category G - Facilities under Construction

Category H -Private, NonProfit Facilities.

Category I - Other (Not in above Categories)
Cost eligibility guidelines are at TAB G-I.

10. Supplements Covering New Projects or Changes in Scope. Supplements to project applications for additional line items of work, or if it is found necessary to increase the scope of work in an approved line item, will be prepared using Form HUD 483.

Submission must be within 90 days after declaration of a Major Disaster or within 30 days after an Emergency Declaration

11. Supplements to Cover Costs in Excess of FEMA Approval on a Categorical Grant. If in performing the work as approved by FEMA, it is found that the actual cost of a line item will exceed FEMA approval or the total cost for all line items will exceed the amount approved in the project application, Commissioner of Public Safety, the applicant's agent, submits a supplement as soon as the information is available using Form HUD 483 including the following:
 - a. The exact work performed or to be performed
 - b. The cost as originally approved
 - c. The actual cost of each project with a list showing materials, quantity, unit prices, etc., and
 - d. The reasons for the increase

G. INSTRUCTIONS FOR PREPARATION OF A CLAIM FOR FEDERAL FINANCIAL ASSISTANCE FOR DISASTER RELIEF UNDER PUBLIC LAW 93-288

1. Form HUD 481. This form is to be used for the detailed listing of expenditures incurred for eligible work approved in the application. The list of expenditures must be shown by the categories and line items that appear in the approved application. This is necessary in order that the claimed costs can be identified and compared to the related line item amounts approved in the application. All items of expense claimed are to be listed individually, with the exception of payrolls, which can be shown in sum for each pay period; and agency owned equipment, which can be summarized by type, total number of hours used, rates and amount, if approved rental rates are used.
2. Form HUD 482. The FEMA requires that this blanket certificate accompany all

claims filed under this program. The form is completed, signed and forwarded to FEMA by the Commissioner of Public Safety, the applicant's agent.

3. Charges for Applicant-Owned Equipment. Costs for the use of applicant-owned equipment may be claimed based on the following:
 - a. A rate schedule furnished by FEMA for the use of equipment utilized during disaster operations. The schedule covers all costs eligible under PL 93-288 for ownership and operation of publicly owned equipment except labor costs of operators. The schedule does not cover insurance, equipment shelter, overhead and administration.
 - b. Submission to the Commissioner of a list of equipment not included on the FEMA schedule, giving the make, model, horsepower capacity and cost of the equipment. The Commissioner of Public Safety will request an allowable rate for items not on FEMA lists from the FEMA Regional Director, request for equipment rates, if required, must be made prior to approval of the project application.

It is not required that supporting documentation, i.e., invoices, payrolls, etc, accompany the claim. However, the records and documents supporting the claim must be retained for audit by the Territorial and Federal Governments. When preparing a claim, include all eligible items of expenditures approved in the project application, even though the total amount may exceed the amount approved by FEMA. In the event of any audit disallowance's, it may be possible to substitute other claimed and eligible costs, up to the maximum of the approved application.

The balance due will be paid after final determination of the eligible costs is verified by Federal desk or on-site audit.

All work approved in the application must be completed within the time period allowed from the date of the President's declaration of a Major Disaster. Claims must be submitted to SCO as soon as possible after all work has been completed and all bills are paid; but not later than 15 days after the close of the time period as provided for under FEMA regulations.

H. REQUEST FOR FEDERAL EQUIPMENT

The Director of Public Works requests, through SCO, Federal equipment when it is needed. He is responsible for managing and distributing such equipment when it is furnished in response to a request.

I. FEDERAL/TERRITORIAL COORDINATION

Soon after the declaration of a Major Disaster, the Federal Coordinating Officer (FCO) and his staff will proceed to the disaster area. The staff includes a Public Assistance Officer, an Individual Assistance Officer, and Federal engineers and inspectors to accomplish jointly with Territorial representatives detailed Damage Survey Reports. The SCO will proceed to the disaster area to work with the FEMA teams. The ECO will coordinate all relief acting into the disaster area including Territorial and local government relief activities.

In a joint FCO/SCO briefing, eligible applicants are given detailed guidance on damage survey and project application procedures, FEMA eligibility requirements for emergency and permanent work and funding operations for approved work. All inquiries concerning Federal assistance should be made to the SCO and/or FCO.

J. PREPARATION AND SUBMISSION OF PROJECT APPLICATIONS

The completed Damage Survey Reports (DSR) are signed by Territorial and Federal representatives on-site. They are forwarded (4 copies and carbons plus

attachments) to the SCO for processing. The DSR is the basis for the Project Application.

1. The SCO accomplishes necessary reproduction of DSRs and attachments and distributes them as follows:

1st Copy - Financial Management, FEMA

2nd Copy - FEMA Regional Office

3rd Copy - Territory Emergency Management Coordination Office (TEMCO)

4th Copy - Applicant concerned

5th Copy - is reproduced in most cases and it is for the Federal Agency who conducted the detailed damage survey under FEMA direction.

2. The SCO prepares the Project Application attaching all DSRs. Private non-profit facilities are Filed under a separate Project Application by the SCO acting as authorized agent for the applicant or entity owning the damaged facilities.
3. The Governor's Authorized Representative signs the Project Application. By doing so, he assures that the Territory will require that the applicant comply with the agreements and assurances on the reverse side of the Project Application or that the Territory will assume responsibility to the Federal government for any deficiencies not resolved to the satisfaction of the FEMA.
4. On the assumption that the Project Application will be approved, the SCO prepares a Chart of Accounts and distributes one copy to the Director of the Department of Treasury for his file, and retains one copy in the SCO office file.
5. The SCO develops the project file based on the approved DSR. The file is segregated by category of eligible disaster-work as provided in the HUD Handbook for Applicant (3300.5).
6. The SCO develops formats for the approved project and fund status reports which are to be submitted monthly by the Director of Public Works for public assistance projects and the

program manager for individual assistance projects.

K. COORDINATION AND MONITORING OF PROGRAM

1. Individual Assistance (408 & 404 Programs)
 - a. The SCO insures efficient administration of the Individual Assistance programs. He sees to it that required weekly reports to FEMA are made and established deadlines for program completion are met.
 - b. He monitors disbursement process and insures that funds are always available for disbursement.
 - c. He conducts mid-program and final review in coordination with FEMA.
 - d. He coordinates required Territorial audit of the programs and provides Federal audit result to FEMA.
 - e. He is responsible for considering appeals of Administrative Panel decision.
 - f. He insures that the Individual and Family Grant verification sampling (5%) is made by the Grant Coordinating Officer.
 - g. He prepares and submits a final statistical report and voucher claim.
2. Public Assistance Program
 - a. The SCO monitors approved projects and provides FEMA status reports.
 - b. He insures proper accountability of Federal fund advances.
 - c. He coordinates scheduling of interim and final inspections of completed work with FEMA.
 - d. He coordinates and arranges required Territorial audit and submission of final audit report and claim.

L. FEDERAL FUNDING

The SCO insures that Federal funds are always available for public and individual assistance programs.

The following actions are taken to accomplish this.

1. He prepares and makes requests for advance of funds from FEMA utilizing the Request for Advance of Funds form. He bases his request on estimated expenditures for the next sixty days and forwards his request to the. Regional Director, FEMA.
2. As soon as the advance check is received, he will turn it over to the Treasurer for deposit to the Office of Treasury.
3. He then prepares a Fund Authorization in original and two copies, distributed as follows:

Original to Finance Officer (Treasurer)

One copy for Accounting

One copy retained in SCO file

Fund Authorizations are numbered by SCO.

M. COMPLAINTS

Complaints of discrimination and complaints by and against contractors will be forwarded to the Office of the Attorney General. He investigates all such complaints and acts in accordance with his findings.

COSTS ELIGIBILITY

CATEGORIES OF ELIGIBLE COST

- A. General. Only certain costs incurred in emergencies or in major disaster operations are eligible for reimbursement. The following paragraphs describe those specific items which are clearly eligible or clearly ineligible. The summary of documentation should be submitted accordingly.
- B. Salaries, Wages and Administrative Expenses.
 1. Eligible. Salaries and wages (including overtime) of regular and extra employees of the applicant directly engaged in the performance of eligible disaster work, except as noted below. However, only gross salaries and wages will be reimbursed and the applicant will be responsible for all other payroll costs.
 2. Ineligible.

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- a. Regular salaries of regularly employed policemen and firemen and of other employees whose duties do not change because of the disaster, such' as levee patrollers, pumping plant operators and building inspectors.
- b. Administrative expenses including:
 - (1) Salaries, wages and expenses of Territorial and local officials who are responsible for directing regular governmental activities.
 - (2) Salaries, wages, fees and expenses of individuals or firms while engaged in the preparation and processing of project applications, claims for payment and supporting documentation, including costs of damage estimates.
 - (3) Related legal fees
 - (4) Office supplies and equipment
 - (5) Rent
 - (6) Telephone and telegraph expenses
 - (7) Interest charges
 - (8) Employer's share of payroll additives over and above the employee's gross pay.

C. Cost for Equipment, Supplies and Materials.

- 1. Eligible.
 - a. Costs for materials and supplies consumed in eligible disaster work, including those procured by direct purchase or taken from applicant's stock.
 - b. Rental costs of privately owned equipment used in performing eligible disaster work, provided rental rates are comparable to the going rates for the same or similar equipment in the locality.
 - c. Costs incurred in the operation of applicant owned equipment, or publicly owned

equipment used by an applicant, in eligible disaster work. Such costs will be based on the FEMA Schedule of Approved Equipment Rates of a Public Entity. A schedule may be obtained from the FEMA FCO for the usual types of equipment used during disaster operations. This schedule has been developed from historical records for costs of owning and operating equipment throughout the country. The schedule covers all costs eligible under PL 93-288 for ownership and operation of publicly owned equipment except labor cost of operators. It includes depreciation, all repairs, fuel, lubricants, tires and other operating costs of a similar nature. The schedule does not cover insurance, equipment shelter, overhead and administrative costs. If an applicant uses equipment which is not listed on the above schedule, he should submit the make, model, horsepower and original cost of the equipment to the Regional Director who will furnish the allowable rate.

2. Ineligible.

- a. Costs for transportation equipment utilized by police and other employees whose duties do not change because of the disaster are not eligible.
- b. Costs of hand tools (shovels, handsaws, hammers, etc.) personal equipment and protective clothing used in performing eligible work.
- c. Charges for insurance, storage, overhead and administrative costs.

D. Costs for Work Performed by Contract.

- 1. Eligible. Reasonable costs for work performed by private contractors on eligible projects contracted for in accordance with Territorial or local statutes, If competitive bidding procedures were not followed, justification will be required as part of the documentation accompanying the voucher.
- 2. Ineligible.

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- a. Costs incurred under contracts based on cost plus a percentage of cost basis, except when approved by the Department.
 - b. Costs incurred under contracts based on contingency clauses. No contract entered into by an applicant for disaster work or services under the Act shall contain a provision which makes the payment for such work contingent upon reimbursement under the Act.
 - c. Costs incurred under contracts performed by contractors whose names appear on the HUD Consolidated List of Debarred, Suspended and Ineligible Contractors will not be reimbursed unless it has been determined by the FEMA Administrator, on an individual contract basis, that it is in the best interest of the Government.
- E. Costs for Work Performed by Arrangement between Government Agencies.
- 1. Eligible. Costs for work performed under arrangements between political subdivisions, but limited to the direct costs of the performing political subdivision, which would be eligible if the applicant had performed the work. Appropriate work supervision and recordkeeping by the applicant and the performing political subdivision are necessary to identify eligible work and to provide auditable records specifically relating costs to each item of eligible work.
 - 2. Ineligible. Costs for work performed under arrangements between the Territory or Territorial political subdivision and a Federal Agency, except where approved by Regional Director of FEMA.
- F. Costs for Lands, Easements and Rights-of-Way. All costs incurred for lands, easements or rights-of-way are ineligible, except in unusual circumstances involving relocation of a facility when approved by the FEMA Administrator.
- G. Cost for work performed by service, fraternal and other similar organizations which do not normally contract their services for disaster relief.
- 1. Eligible. Only out-of-pocket costs for equipment, materials and supplies used or consumed in the performance of eligible work. This could include the FEMA rate for operating group members' equipment.
 - 2. Ineligible. Wages or salaries of member personnel engaged in disaster relief activities.
- H. Prison Labor.
- 1. Eligible. Out-of-pocket costs to an eligible applicant of prison labor performing eligible disaster work, including the amount paid the prisoners in accordance with rates established prior to the disaster, and the cost of transportation.
 - 2. Ineligible. Costs of food, lodging and guards. Also, any costs for prison labor utilized by a contractor.
- I. Costs for Vector Control and Fixed Pumping Operations.
- 1. Eligible. Costs which are not a normal recurring item on an annual basis. When such costs are a normal recurring item, excess of such costs (including FEMA equipment rates) over the average cost for the same period of time during the previous three years will be considered eligible. Eligibility criteria shall be in accordance with paragraphs A through H above. For permanently installed pumping equipment, the applicant may be required by the Regional Director of FEMA to submit additional information on the pumping operation.
 - 2. Ineligible. Any repairs of fixed pumping equipment required as a result of pumping operations.

SAMPLE FORMAT

GOVERNOR'S REQUEST FOR MAJOR DISASTER DECLARATION
The President
The White House
Washington, D.C. 20530
Through:

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Mr.

Regional Director

Federal Emergency Management Agency

Region IX, Bldg. 105

Presidio of San Francisco, CA 94129

Dear Mr. President:

I respectfully request that you declare that a major disaster exists in the

_____ District, Territory of American Samoa, under the provisions of the Disaster Relief Act) of 1974, Public Law 93-288.

During the period _____, (description of event, e.g., severe storms) caused extensive damage to public and private property in (District). (Specifics as to severity and magnitude of the damage to include numbers of dead, injured and evacuated, number of homes and businesses destroyed or severely damaged, damage of facilities rendering essential public services, damage to road and transportation systems, damage to farms and crops, etc.) Total damage estimates at this time are:

Public - \$ _____ ,

Private - \$ _____ ,

Agriculture- \$ _____

On _____, I directed the execution of the Territory of American Samoa Disaster Plan in accordance with Sec. 301 of the Law. Territorial and local efforts in response to this disaster situation have been as follows: (Describe efforts in specific terms of material and personnel committed or to be committed.)

I find that the situation is beyond the capabilities of the Territory and the _____(District)_____ to effectively alleviate the existing situation in that (specific statement of current shortcomings of local and Territorial resources in terms of funds, material and technical/managerial personnel).

Pursuant to Section 301 of the Law and Federal Disaster Emergency Management Agency Regulations, I certify that the total of expenditures and obligations for this disaster for which no Federal

reimbursement will be requested are expected to exceed \$ _____ in accordance with the following (attached) table.

I have made direct requests for assistance under other statutory authorities on the following Federal agencies with their responses as indicated. (Itemized statement of such requests: e.g., COE for emergency flood fighting assistance, provided _____ pumps, _____ sandbags and technical personnel.)

I specifically request (I do not request) assistance under provisions of Section 408 of the Law to establish an Individual and family Grant Program in the affected area. (If not requested, omit the following.)

I estimate the total cost of the program(s) will amount to \$ _____ Territorial funds for the required 25% of this cost are available (or have been requested of the Legislature of American Samoa and are expected to be appropriated by (date) or are not immediately available and I request an advance from Federal funds under the provisions of Section 408(b) of the Law). My plan for administration of this program is attached (will be submitted by) _____(date)

I further request other Federal assistance of the following types: (Indicate specific types of assistance authorized under the law. Attach table of estimated costs broken out by category of public and individual assistance).

I request that the following District (or portion thereof) be designated as eligible for this Federal assistance under your declaration: (List specific areas.)

Additional considerations which support the necessity for Federal assistance in (previous disasters in the same locale, economically depressed area, etc.) the same locale, economically depressed area, etc.)

Governor

SAMPLE FORMAT

GOVERNOR REQUEST FOR EMERGENCY DECLARATION

The President

The White House

Washington, D.C. 20500

Through;

Mr. Regional Director

Federal Emergency Management Agency

Region IX, Bldg. 105

Presidio of San Francisco, CA 94129

Dear Mr. President:

I respectfully request that you declare an emergency to exist in the Territory of American Samoa under the provisions of the Disaster Relief Act of 1974, Public Law 93-288.

The emergency situation has resulted from (location and descriptions of the event or threatened event which created the emergency. Specifics as to the severity and magnitude of the damage or threatened damage to include numbers of individuals, homes, businesses, other property and facilities essential to public health and safety affected or threatened).

On _____ I directed the execution of the emergency plan of the Territory of American Samoa. Local and Territorial efforts in response to this emergency situation have been (are planned) as follows: (Describe efforts in specific terms of funds, material and personnel committed or to be committed.)

I find that the situation is beyond the capabilities of the affected local government and the Territory effectively alleviate the existing (or threatened) emergency situation in that: (Specific statement of shortcomings of local and Territorial resources in terms of funds, material and technical/managerial personnel)

I have made direct requests for assistance under other statutory authorities on the following Federal agencies with their response as indicated: (Itemized statement of such requests; e.g., Corps of Engineers for emergency flood fighting assistance,

provided _____ pumps, _____ sandbags and _____ (technical personnel)

I request that the following specific types of (additional) Federal assistance provided for a period _____ days for the purposes indicated: (Specific statements of type and purpose of Federal assistance required e.g., technical assistance or advice in reestablishing power supply, inspection of food supplies, vector control, management of temporary housing program, specific equipment for specific projects such as so many boats for evacuation, so many generators for emergency power, heavy equipment for debris removal to open specified essential routes, temporary bridging for specified essential crossing, specific emergency projects to be completed under Federal direction, Federal funding. of, specific emergency projects or activities; numbers of temporary housing units for Territorial, local government or voluntary agency administered housing program.)

I request that the following District be designated as eligible to receive this Federal assistance as may be appropriate to the situation existing in that area.

Additional considerations which support the necessity for Federal assistance are: (previous disasters in same locale, economically depressed area, etc.) in this emergency situation

Governor

SAMPLE FORMAT

Mr.

Regional Director

Federal Emergency Management Agency

Region IX, Bldg. 105

Presidio of San Francisco, CA 94129

Dear Mr.

Pursuant to my request to the President through you for a major disaster declaration,

I hereby request that assistance authorized under Section 408 (Individual and Family Grant Program) Disaster Relief Act of 1974 be made available.

I have determined that assistance under the Act and from other means will not be sufficient to meet the

AMERICAN SAMOA ADMINISTRATIVE CODE – 2023 EDITION

disaster-related necessary expenses or serious needs of approximately _____ to _____ families. This estimate is based on reports provided by the Commissioner of Public Safety.

In the implementation of this grant program, I certify that the Territory of American Samoa will implement an approved administrative plan and that the grant program will be made available throughout the major disaster area designated by the President I have directed Mr. Commissioner of Public Safety, who will serve as my authorized representative, to maintain close coordination with your office and provide you reports as you may require.

Total funding for grants to individuals and families under this program is estimated to be \$_____ of which \$_____ will be the Federal share and \$_____ will be the Territory share. All Federal grant funds and all funds from Territory sources will be specifically identified in the accounts of the Territory.

Since no appropriated funds are available at this time, the Territory is unable to meet the 25 percent share and I request that \$_____ be advanced by the Federal government to cover both the Federal and Territorial shares. In order to repay this advance, I will as the Legislature of American Samoa in their next regular session for an appropriation of funds, and will repay this advance as soon as funds become available. I anticipate that this advance will be repaid by _____ I agree to return, immediately upon discovery, all Federal funds advanced to meet the Territory's 25 percent share which exceed actual requirements.

Sincerely yours,

GOVERNOR

Attachment: Individual and Family Grant Administrative Plan

SAMPLE FORMAT

Honorable Governor

Territory of America Samoa

Pago Pago, American Samoa 96799

Dear Governor

This letter is the basic continuing Federal-Territorial Agreement for emergencies

(hereinafter referred to as the Agreement) pursuant to Sections 301 (a) and 305, Public-

Law 93-288, Executive Order 1795 and Part 2205 of the Federal Emergency

Management Agency Regulations, Title 24 CFR. Copies of Public Law 93-288 and Title 24, CFR, Part 2205, and TAD G-1, Federal Financial Assistance, are attached hereto and made a part hereof.

Requests for emergency assistance shall be made by the Governor of the Territory of

American Samoa to the President, through the Regional Director of the Federal

Emergency Management Agency, HUD, Region IX (hereinafter referred to as the Regional Director). The Governor's request shall be based upon a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities the Territory and the affected local government and that Federal assistance is necessary to save lives and to protect property, public health and safety or to avert or lessen the threat of a disaster. The Governor's request will furnish information describing Territory and local efforts and resources to include dollar amounts, which have been or will be used to alleviate the emergency, including that for which no Federal funding will be requested, and will define the particular type and specific extent of Federal aid required, as well as the expected duration of such assistance. Upon the declaration of an emergency, this information will be incorporated into an amendment for the emergency.

Upon a determination by the President that an emergency exists which warrants Federal assistance, the Administrator of the Federal Emergency Management Agency shall immediately initiate action to provide Federal assistance under such determination and in accordance with applicable laws and regulations and this Agreement. The emergency area in which assistance is authorized shall be determined by the Administrator based on the Territory's request

An amendment to this agreement shall be executed by the Governor and the Regional Director for each emergency to designate Territorial Certification Officers, indicate area eligible for Federal disaster assistance, specify the incidence period, and identify any specifics peculiar to the current emergency. Subsequent supplements to the amendment for the same emergency may be executed by the Governor’s Authorized Representative and the Regional Director. A new continuing agreement will be executed if there is a change in Governors or Regional Director.

In the event that funds are to be transferred to the Territory for emergency relief purposes, the Territory and its political subdivisions agree to the following: In the event that the Territory or local government violates any of the conditions imposed upon emergency assistance under Public Law 93-288, this Agreement, or applicable Federal regulations, the Administrator will notify the Territory that additional financial assistance for the purpose of the project in connection with which the violation occurred will be withheld until each violation has been corrected. Provided, however, that if the Administrator, get such notice to the Territory, is not satisfied with the corrective measures taken to comply with his notification, the Administrator will notify the Territory that further financial assistance will be withheld for the project’s for which it has been determined that a violation exists, or for all or any portion of financial assistance which has been or is to be made available to the Territory or local governments for the purpose of emergency assistance under the provisions of publication 288; this Ateeflifit, applicable Federal Regulations.

No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit to arise thereupon; provided, however, that this provision shall not be construed to extend to any contract made with a corporation for its general benefit.

The Territory will establish and maintain an active Territorial program under this agreement of non-discrimination in disaster assistance, as outlined in Part 2205.13, Title 24 CFR. This program will encompass all Territorial and local actions pursuant to this Agreement.

Reimbursements to a Territory for eligible emergency costs will be based on the submission of project applications and vouchers supported by a detailed breakdown of eligible costs.

The Territory will notify all Territorial and local agencies and local governments within the areas defined by each amendment of the terms and conditions agreed to herein, including but not limited to eligibility for Federal Assistance, and time limitations.

Sincerely,

Regional Director

Federal Emergency Management Agency

Region IX

Agreed:

Governor Date

Honorable

Governor

Territory of American Samoa

Pago Pago, American Samoa 96799

Dear Governor

This letter is the Federal-Territorial Disaster Assistance Agreement for a Major Disaster, No. FEMA under Public Law 93-288, in accordance with Section 2205.44 of the Federal Disaster Assistance Regulations. A copy of the Regulations and TAB G-1, Federal Financial Assistance and TAB G-2, Territorial Certification Officers, are attached hereto and make a part hereof.

On (Date) , President determined that damages resulting from _____ beginning about (Date) have caused a major disaster in the Territory and acknowledge receipt of American Samoa or other public agencies thereof are expected to expend in excess of \$ _____ for disaster relief

purposes for which no Federal reimbursement has been or will be received, in accordance with the table contained in your request. A copy of your request is attached hereto as TAB G-3, and made a part hereof.

Federal assistance will be as authorized by Public Law 93-288, and will be made available in accordance with Executive Order 11795 and the Regulations attached hereto.

No project application will be approved for assistance unless the damage to be alleviated was a result of the major disaster which took place from (date) through and including (date)

In the event that funds are to be transferred to the Territory of American Samoa for disaster relief purposes, the Territory agrees to the following: In the event that the American Samoa Government or its political subdivisions, violates any of the conditions imposed upon disaster relief assistance under Public Law 93-288, this Agreement, or applicable Federal Regulations, the Administrator will notify the Territory that additional financial assistance for the purpose of the project in connection with which the violation occurred will be withheld until such violation has been corrected. Provided, however, that the Administrator, after such notice to the Territory, is not satisfied with the corrective measures taken to comply with this notification, the Administrator will notify the Territory that further financial assistance will be withheld for the project for which it has been determined that a violation exists, or for all or any portion of financial assistance which has been determined that a violation exists, or for all or any portion of financial assistance which has been or is to be made available to the Territory for the purpose of disaster relief assistance under the provisions of Public Law 93-288, this Agreement, or applicable Federal Regulations.

No member of or Delegate to Congress, or Resident Governor, shall be admitted to any share or part of this Agreement, nor to any benefit to arise thereupon; provided, however, that this provision shall not construe to extend to any contract made with a corporation for its general benefit.

The Territorial Officers authorized to execute certifications and otherwise to act on behalf of the

Territory are listed in TAB G-2, which is attached hereto and made a part hereof.

Federal assistance extended under Public Law 93-288 and this Agreement shall be limited to the Territory of American Samoa and such additional areas as may be subsequently designated by the Administrator of the Federal Emergency Management Agency.

The Territory will establish and maintain an active Territorial program under this agreement of nondiscrimination in disaster assistance, outlined in Part 2205.13, Title 24, CFR. This program will encompass all Territorial and local actions pursuant to this Agreement

The Territory will establish and maintain in a program under this Agreement to assure that recipients of

FEMA disaster assistance comply with 24 CIER Part 24, Debarment, Suspension and Ineligibility of

Contractors and Grantees. This program will encompass all Territorial and local contracts pursuant to this Agreement.

The Territory will notify all Department agencies, and local governments within the areas defined by the Agreement of the time limitations agreed herein and the terms and conditions of eligibility for Federal assistance.

This Agreement may be amended at any time by written approval of both parties.

Sincerely,

Regional Director
Federal Emergency Management Agency
Department of Housing and
Urban Development
Region IX

Agreed:

Governor

Date

TERRITORY OF AMERICAN SAMOA
DISASTER ASSISTANCE PLAN

1988

-ANNEX H-

DISASTER ASSISTANCE CENTER

TERRITORIAL EMERGENCY MANAGEMENT
OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

DISASTER ASSISTANCE CENTER

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1988

ANNEX “I”

TEMPORARY HOUSING

TERRITORIAL EMERGENCY MANAGEMENT
OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1988

ANNEX “J”

INDIVIDUAL AND FAMILY GRANT
PROGRAM

TERRITORIAL EMERGENCY MANAGEMENT
OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

I. PURPOSE

This annex establishes the organization and procedures for rapid and convenient assistance to disaster victims through the use of a Disaster Assistance Center (DAC).

II. GENERAL

After a major disaster declaration has been requested by the Governor and declared by the President, a Federal Coordinating Officer (FCO) is appointed. The FCO represents the President in the disaster area and is responsible for the coordination of all Federal disaster assistance. He works closely with the State Coordinating Officer (SCO) to assure effective implementation of assistance programs. Included on the FCO’s staff is the Individual Assistance Officer. The Individual Assistance Officer is directly responsible to the FCO for all matters relating to Individual assistance, including the establishment, location and operation of Disaster Assistance Center and appropriate Mobile Teams. The SCO is responsible for identifying conveniently located buildings, which are suitable for this activity. In the event a mobile team is required, the SCO will arrange suitable transportation for the team to the areas of operation. When necessary, Aiga buses will be utilized to transport the disaster victims to the Center or mobile team sites.

III. OPERATION AND MANAGEMENT

A. Location Normally one DAC will be established in the Bay Area on the island of Tutuila. The Lee Auditorium has been tentatively identified for this purpose. However, depending upon emergency housing needs at the time, other facilities such as the Samoan High School, the Pago Pago Gymnasium, or the Adult Education Center should be considered. If disaster damage is widespread, and includes the

Manu’a Islands group, a mobile team will also be necessary or Manu’a High School Building, depending upon the emergency at the time. The ECO in close coordination with the SCO will select the location for the Center and arrange necessary schedules and site visits for the Mobile Team.

B. Equipment; Once the location has been selected, the SCO will request furniture (tables, desks, chairs, typewriters, etc.) and provide office

supplies (paper, pens; pencils, etc:) necessary for operation of the Center and/or mobile team sites. The Office of Procurement will provide the furniture and arrange the floor plan as necessary.

- C. Construction. Any temporary construction or building modification essential for Center operations will be accomplished by the Department of Public Works. This will be only upon the request and authorization of the SCO.
- D. Support Personnel. Secretarial and Clerical assistance will be provided by the Department of Administrative Services. Legal Affairs, Office of Human Resources, Office of Procurement and Territory Emergency Management Coordination Office (TEMCO). Security and Traffic control personnel will be furnished by the Department of Public Safety. The Department of Health will provide a Nurses Aide and first aid station. Personnel for maintaining the waiting area and refreshments will be furnished by the Office of Samoan Affairs.
- E. Staff Personnel. The Center will be staffed by both Federal and Local officials. The Center Manager and/or Assistant Manager may be selected locally depending upon the availability of skilled personnel.

The staffing of the Center will include but not necessarily be limited to the following activities:

- a. Emergency needs immediate shelter, food, clothing, medical aid, minor repair home clearing, etc., are provided by personnel from the Red Cross, Churches, and other Private Relief Organizations.
- b. Temporary Housing will be provided by Department of Public Works assisted by available FEMA personnel. This will include the identification and scheduling of emergency minimal repairs to owneroccupied dwellings.
- c. Disaster Unemployment Assistance for those out of work because of the disaster will be provided by the Department of Manpower Resources.

- d. Disaster loans for referencing, repair, rehabilitation or replacement of real and personal property will be provided by Farmers Home Administration, Department of Agriculture, Small Business Administration.
- e. Tax assistance for computing credits based upon casualty losses will be provided by the Local Office of the Internal Revenue Service.
- f. Veterans Administration benefits, pensions, insurance and adjustments will be handled by the local and regional officials of the VA.
- g. Social Security assistance for recipients in applying for disability, death or survivor benefits will be provided by the local Social Security Office.
- h. Legal assistance for families unable to afford or secure such service will be provided by the Government of American Samoa Attorney General's Office and support from Young Lawyers Section of the American Bar Association.
- i. Individual and family grants to meet necessary expenses or serious needs of individuals or families adversely affected by the disaster will be funded by the Federal Government and the Government of American Samoa. The Territory Emergency Management Coordination Office (TEMCO) as designated by the Governor, has the overall responsibility for administering the IEG program.
- j. Crisis counseling to relieve mental health problems related to the disaster will be provided by the Department of Human Resources.
- k. Debris removal from private property when in the public interest will be accomplished by the Department of Public Works.
- l. Reception and Exit Interview will be accomplished by select skilled, personnel

either Local or Federal as determined by the SCO and the Center Manager.

- F. Activation and Close Down. The Federal Coordinating Officer will determine the necessity for establishing a Disaster Assistance Center and/or Mobile Team sites and coordinate his/her decision with Local government officials. They will prepare a list of agencies to be represented and select the Center Manager.

Full use will be made of a local communications media. (Radio, T.V., Newspaper, etc.) to ensure widespread distribution of disaster assistance information. Hours of operation, transportation availability, etc. should be thoroughly explained. The use of preselected, alphabetically sequenced processing times, or inline pre-screening of victim's needs, should be considered.

The Center Manager will follow the detailed procedure outlined in the Handbook for Disaster Assistance Center Managers, HUD 3300.3 (Rev.) February 1975. He/she will insure that the ECO and SCO are recipients of all reports. The ECO in coordination with the SCO will determine the date for closing the Center. The Center Manager will supervise the close down and prepare the final report in accordance with HUD 3300.3.

AMERICAN SAMOA GOVERNMENT ADMINISTRATIVE PLAN FOR TEMPORARY HOUSING

I. PURPOSE

The purpose of this plan is to provide necessary administrative procedures for carrying out the intent of Sec. 404 PL 93-288 as it applies to the residents of American Samoa following a disaster declaration by the President of the United States.

II. AUTHORITY

- A. Disaster Relief Act of 1974 (Public Law 93-288)
- B. FEMA Regulations 24 CFR 2205.
- C. American Samoa Government Gen. Memo 107-1978.

III. GENERAL

When the Islands of American Samoa suffer damage to the extent that people are homeless, immediate emergency relief action is essential. In addition to normal relief assistance (search! rescue, medical assistance, food and mass shelter), temporary housing aid may be required. Available unoccupied houses, pre-fabricated buildings, mobile homes or trailer homes may not be sufficient to meet the needs of persons displaced by the disaster in American Samoa. Consequently, reliance upon the basic Samoan AIGA (family) system is necessary. In this way, disaster victims will, whenever possible, be housed by more fortunate members of the AIGA while repair or restoration is made to their homes. In situations of large scale destruction it may be necessary, to lease AIGA GUEST HOUSES, (Family owned, open-sided, structures normally used for council and social affairs) which are undamaged. These buildings can quickly be made habitable for limited periods of time by erecting outside walls and installing rooms and dividers. Approval for use of these GUEST HOUSES will normally be obtained through the Office of Samoan Affairs in negotiation with the Chief of the appropriate AIGA. Subsequent restoration of the GUEST HOUSES will be dependent upon the desires of the AIGA Chief, and should be included in the terms of the lease. Besides the use of guest houses for emergency shelter, there is one other course of action available to the territory for temporary housing. This is the use of schools and churches. Approval for the use of schools will be obtained through the Department of Education. Approval for the use of churches will be obtained through the appropriate village chiefs and minister. Beds, mats, etc. for this housing will be provided by the local office of Red Cross.

IV. ORGANIZATION, RESPONSIBILITIES, AND FUNCTIONS

- A. Federal Government. The Federal Emergency Management Agency will designate a Federal Coordinating Officer (FCO) to guide and assist the State Coordinating Officer (SCO) in the accomplishment of the purpose of this plan. The Federal Government is responsible for approving housing design or modifications, providing materials, or funding for the procurement of materials based upon the specific housing needs resulting from the disaster. The

foregoing is supplementary to relief and assistance actions taken by the American Samoa Government.

- B. American Samoa Government. The designated State Coordinating Officer (SCO) will initiate all actions required to implement this plan. It is the responsibility of the Director, Department of Public Works, to insure that sufficient materials are on hand or readily available to begin immediate repair or restoration to habitable conditions, of owner occupied homes. Typical costs of materials should be prepared and maintained for submission in the event conversion of selected GUEST HOUSES is necessary.

Guidelines for determination of allowable and worthwhile repair to individual homes will be established by the Department of Public Works in accordance with FEMA Regulation 24 CFR 2205.45. Damage Assessment Team reports will be correlated with the guidelines for the selection of those homes deemed eligible for immediate restoration. The Governor of American Samoa is the approving authority for all emergency and temporary construction.

Detailed cost estimates for the temporary housing requirements of each disaster situation will be provided to the SCO by the Director, Department of Public Works. It will be the responsibility of the SCO to include this information in the compilation of data for the Governor's determination of the existence of a State of Emergency and subsequent request for a Disaster Declaration by the President of the United States.

American Samoa Government established procedures for construction, inspection, accounting and audit will be utilized by the Department of Public Works for all projects initiated under this plan. Supplemental guidelines will be provided by FEMA as necessary to meet Federal requirements.

V. ADMINISTRATIVE PLAN REVIEW

The Territory Emergency Management Coordination Office and the Director of Public Works shall review this plan annually.

PREFACE

TERRITORY OF AMERICAN SAMOA

INDIVIDUAL AND FAMILY GRANT PROGRAM ADMINISTRATIVE PLAN

This Plan sets forth the authorities, roles, responsibilities, and procedures within this Territory of American Samoa for implementation of the Individual and Family Grant (IFG) Program under Public Law 93-288, the Disaster Relief Act of 1974. This Plan is intended to contain provisions for the administration of the IFG Program in compliance with 44 CFR 205.54 and the Federal Emergency Management Agency's (FEMA) policies. Public Law 93-288 and 44 CFR 205.54 are the primary source documents and guidance for administering the IFG Program. This Plan, as written, coincides with the cited authorities. If any inconsistencies are discovered during the time of program implementation, the law and regulations will pertain.

Where appropriate, specific responsibilities have been assigned to designated agencies and/or individuals within the Territory. These agencies and/or individuals are responsible for developing their implementation procedures and providing sufficient staff to carry out those responsibilities.

Compliance with the Plan and Federal regulations is a condition for payment by FEMA of its share of program costs. Consequently, if agencies and/or individuals identified in the Plan are not prepared to carry out their roles and responsibilities, the Plan may not be approved and program funds cannot be obligated by the FEMA Regional Director. Therefore, all agency heads and other individuals identified herein, are requested to cooperate with the Territory's Grant Coordinating Officer, and to ensure that the program is implemented, assistance provided, and the program completed in a timely manner.

I. PURPOSE

The purpose of this plan is to establish the administrative procedures and describe the organizational structure for implementing the individual and Family Grant Program (IFGP) subsequent to the "an EMERGENCY or MAJOR DISASTER declaration as requested by the Governor and authorized by the resident". This Program is

intended to meet the disaster-related serious needs and necessary expenses not provided by any other program or insurance.

II. AUTHORITIES

- A. Public Law 93-288, The Stafford Act
 - a. Section 411 - Individual and Family Grant Program
 - b. Section 401 - Procedure for Declaration
 - c. Section 308 - Non-Discrimination in Disaster Assistance
 - d. Section 312 - Duplication of Benefits
 - e. Section 313 - Standards and Reviews
 - f. Section 314 - Criminal and Civil Penalties.
- B. Public Law 93-234 as amended, Flood Disaster Protection Act of 1973
- C. FEMA Regulations, 44 CFR Part 9, Floodplain Management and Protection of wetlands FEMA Regulations, 44 CFR 206.131, IFG FEMA Regulations, 44 CFR Part II, Claims FEMA Regulations, 44 CFR Part 10, Environmental Considerations.

FEMA Regulations, 44 CFR Part 13, Uniform Administrative Requirements FEMA Regulations, 44 CFR Part 14, Administration of Grants
- D. Government of American Samoa P.L. 15-105. Territorial Disaster Act
- E. Executive Order 11988, Floodplain Management
- F. Executive Order 11990) Protection of Wetlands
- G. FEMA Handbook DR & R 18, Individual and Family Grant Program FEMA Handbook DR & R 17, Duplication of Benefits

III. GENERAL

Following a major disaster declaration by the President, a number of State and Federal Assistance Programs are made available to victims suffering losses or damages in the designated disaster area. One such program is the IFG Program authorized under

Section 408, Public Law 93-288, the Disaster Relief Act of 1974. The Grant Program authorized by that section provides for direct grants that are seventy-five percent (75%) Federally funded and twenty-five (25%) State funded. The grant award for each individual or family shall not exceed \$5,000 for any one disaster. The Governor is responsible for the administration of the Grant Program. The Grant Program is intended to provide funds to disaster victims to permit them to meet those necessary expenses or serious needs for which other governmental assistance is either unavailable or inadequate. The Grant Program is not intended to indemnify all disaster losses or to purchase items or services that may generally be characterized as luxury, recreational, decorative, or nonessential.

IV. DEFINITIONS

- A. “Necessary expense” means the cost of a serious need.
- B. “Serious need” means the requirement for an item or service essential to an individual or family to prevent, mitigate or overcome a disaster-related hardship, injury or adverse condition.
- C. “Family” means a social unit living together and composed of:
 - 1. Legally married individuals or those couples living together as if they were married and their dependents; or
 - 2. A single person and their related dependents; or
 - 3. Persons who jointly own the residence and their dependents.
- D. “Individual” means anyone who is not a family, as described above.
- E. “Assistance from other means” means assistance, including monetary or in-kind contributions from other governmental programs, insurance, voluntary or charitable organizations, or from any source other than those of the individual or family. It does not include assistance for expendable items.

- F. “Expendable items” means consumables as follows: linens, clothes and basic kitchenware (pots, pans, utensils, dinnerware, flatware and small kitchen appliances).
- G. “Dependent” means someone who is normally claimed as such on the Federal or State tax return of another according to the Internal Revenue Code. It may also mean the minor children of a couple not living together where the children live in the affected residence with the parent who does not actually claim them on the tax return, or any other person or relative living in the affected residence.
- H. “Owner-occupied” means that the residence is occupied by:
1. The legal owner;
 2. A person who does not hold formal title to the residence but is responsible for payment of taxes, maintenance of the residence and who pays no rent; or
 3. A person who has lifetime occupancy rights in the residence with formal title vested in another;
 4. In States where documentation proving ownership is not recorded or does not exist, the State is required to include in its Administrative Plan a State Attorney General approved set of conditions describing adequate proof of ownership.
- I. “Flowage easement” means an area where the landowner has given the right to overflow, flood, or submerge the land to the government or other entity for a public purpose.
3. “Federal-Coordinating Officer” (FCO) means the person appointed by the Associate Director, FEMA, to coordinate Federal assistance efforts with those of the State Government.
- K. “State Coordinating Officer” (SCO) means the individual appointed by the Governor to coordinate State and local disaster assistance efforts with those of the Federal Government.
- L. “Administrative Panel” means 1 or more State employees, appointed by the State to determine applicant eligibility for a grant and the grant amount.
- M. “Appeal Authority” means the State appointed person(s) who make decision on appeals by applicants concerning Grant Awards.
- N. “Grant Coordinating Officer” (GCO) means the State official assigned management responsibility for the IFG Program.
- O. “Regional Director” means the Director of the Regional Office of FEMA. P. “Primary Residence” means a residence:
1. Where the owner-occupant lives permanently; or
 2. Where the owner-occupant lives on occasionally during the year; or
 3. To which he/she had to occupy for cultural or traditional functions; or
 4. To which he/she had recently moved; or
 5. Which he/she had recently acquired for the purpose of residing.
- NOTE: Recreational, vacation or primarily income producing property does not qualify as a primary residence.

V. RESPONSIBILITIES

The Territory Emergency Management Coordination Office (TEMCO) is designated by the Governor as the agency having overall responsibility for administering the IFG Program. Other agencies having specific responsibilities in administering the program are identified in this section. In order to ensure that the program is implemented in a timely and effective manner, these agencies are required to develop the procedures necessary to carry out their responsibilities.

A. The State Coordinating Officer (SCO) is responsible for coordinating State and local disaster assistance efforts with those of the Federal Government.

1. The State Coordinating Officer shall:

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- a. Coordinate State and local disaster assistance efforts with those of the Federal Government:
 - b. Be the principal point of contact for the Federal Coordinating Officer regarding relief activities;
 - c. Ensure compliance with the FEMA-State agreement.
 - d. Provide general guidance to all State agencies assigned responsibilities in the State Plan;
 - e. Publicize the availability of the IFG Program to potential applicants by:
 - (1) Coordinating PIO activities with other agencies and the FCO.
 - (2) Providing news releases concerning the IFG Program to local and State newspapers, radio and television stations and publicizing opening and closing dates.
 - f. Upon notification by the Grant Coordinating Officer of suspected fraud or misapplication of funds, notify the FEMA Regional Director and initiate a preliminary investigation by the State:
 - g. If the results of the preliminary investigation warrant further action, forward the case to the State Attorney General, and forward a copy of the investigation to the Regional Director; and
- B. The Governor's Authorized Representative (GAR) shall:
- 1. Ensure that Federal and State funds are acquired and made available for grants and authorized administrative expenditures throughout the duration of the Individual and Family Grant Program;
 - 2. At the initiation of the Individual and Family Grant Program, ensure that Federal shares of advances are accompanied by State shares of advances:
- 3. Assure that the State establishes separate accounts for grants and administrative costs: and
 - 4. Request extensions of time limitations to the Regional Director, when necessary.
- C. The Grant Coordinating Officer and his program manager(s) shall implement, manage and coordinate all phases of the LFG program in accordance with applicable Federal regulations and the State's administrative plan. This responsibility includes, but is not limited to:
- 1. Providing training, technical assistance and program guidance to all staff having responsibilities in the program;
 - 2. Determining jointly with FEMA the pricing for items of real estate and generic rooms (FEMA Form 90-56).
 - 3. Determining the pricing for items of personal property and all other assistance provided by the program (FEMA Form 90-5 6);
 - 4. Participating in the briefing of FEMA contract inspectors to ensure that:
 - a. The inspectors understand the specific nature of the disaster and affected areas;
 - b. A common understanding of the role of the inspector is developed and
 - c. The requirements of the IFG program are clearly defined and understood by the inspectors.
 - 5. Determining staffing requirements of the program to include:
 - a. Supervisory staff
 - b. Trainers
 - c. Clerical workers
 - d. Verifiers
 - e. Inspection reviewers

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- f. Administrative Panel members
 - g. Appeal authority
 - h. Quality control staff
6. Provide technical assistance to the panel to ensure consistency in determination of eligibility and grant amounts.
 7. Assure strict compliance with Public Law 93-288, Section 311.
 8. Submit required reports to the FEMA Regional Director, ECO, and SCO.
 9. Closely coordinate with Federal and Volunteer agencies that provide disaster assistance to prevent duplication of benefits (DOB). Duplication of benefits information will be forwarded to the GCO from the FEMA computer branch.
 10. Notify the State Coordinating Officer that a case of suspected fraud or misapplication of funds exists.
 11. Notify each applicant by letter of the eligibility determination made on his application.
 12. Ensure that all grants are disbursed within twenty-one (21) working days after receipt of approved grants from the Administrative Panel.
 13. Submit the Final Statistical Summary Report to the Regional Director no later than ninety (90) days after the completion of all grant award activity.
 14. Provide field verification of a random sample of the disbursed grant expenditures.
 15. Determine validity of extenuating circumstances for late filing of applications.
 16. Refer applicants with serious needs greater than the maximum IFG grant to the American Red Cross for unmet needs assistance.
- D. The Department of Treasury shall:
1. Arrange for the State’s share of funding in compliance with Government of American Samoa P.L. 15-105.
 2. Ensure all disbursements subject to Federal Audit are recorded properly and records retained for such audit.
- E. The Departments of Legal Affairs, Samoan Affairs, Administrative Services, Office of Human Resources, Office of Procurement and the Territory Emergency
- Management Coordination Office shall provide personnel to fulfill the roles of Administrative Panel(s), inspection reviews, Appeal Authority, trainers, verifiers, quality control, and clerical staff as requested by the OCO.
- ## VI. ELIGIBILITY
- In administering the Grant Program, the eligibility of an individual or family for a grant is based on meeting disaster-related necessary expenses or serious needs for which other governmental disaster assistance is unavailable or inadequate, and for which assistance from other means has not been received or refused. Applications must be filed within 60 days following the date of the declaration and for a minimum of 30 days thereafter when the State determines that extenuating circumstances beyond the applicant’s control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely manner. The eligibility of an individual or family shall be determined by the Administrative Panel in accordance with the following criteria:
- ### A. GENERAL ELIGIBILITY
1. In administering the IFG program, the State shall determine the eligibility of an individual or family in accordance with the following criteria: To qualify for a grant under this section, an individual or family representative must:
 - a. Make application to all applicable available government disaster assistance programs for assistance to meet a necessary expense or serious need, and be determined not qualified for such assistance, or demonstrate that the assistance received

does not satisfy the total necessary expense or serious need.

- b. Not have previously received or refused assistance from other means for the specific necessary expense or serious need, or portion thereof, for which application is made; and
 - c. Certify to refund to the State that part of the grant for which assistance from other means is received, or which is not spent as identified in the grant award document.
2. Individuals or families who have knowingly assumed the risk of living in a hazardous area are not eligible for grant assistance. This “assumption of risk” applies when:
- a. The property is located within a flowage easement.

The property is located between a river and a levee, where the family built the home after the levee was built or where the family was compensated for future flood damage at the time the levee was built:
 - c. A residence is located on land leased to a family or individual where the lease holds the government harmless from the risk of damage.

NOTE: This restriction does not apply if an applicant is going to use the funds to move out of the risk area.

3. The President’s Executive Orders 11988 and 11990 and FEMA Regulations 44 CFR require that a floodplain management review process be completed for certain actions which may be taken under the IFG program. The Floodplain Management Review involves an eight step decision making process designed to evaluate the proposed action to avoid the floodplain where practical and to minimize impacts if avoidance cannot be achieved. For each disaster in which the IFG Program is implemented, the Grant Coordinating Officer or his delegate will be designated as the Floodplain Management Reviewer to assure that the requirements in the Executive Order are met:

- a. For the IFG Program, there are five (5) types of actions which require the decision-making process. They are:
 - 1. Purchase of mobile homes, travel trailers or readily fabricated dwellings;
 - 2. Restoring/repairing private bridges;
 - 3. Building new private bridges;
 - 4. Pooling grants to restore/repair private bridges; and 5. Grants for structures as minimum protective measures.
 - b. If any of the above actions are anticipated under the IFG Program, the review process must be completed. Compliance is required for all types of disaster incidents, not just for damage due to flooding.
 - c. For more detailed information on the eight-step decision-making process see FEMA Handbook DR & R 18 Individual and Family Grant Program.
4. Individuals or families who incurred necessary expenses or serious needs in the major disaster area may be eligible for assistance under this section without regard to their alienage or residency in the major disaster area or within the State in which the major disaster has been declared.
5. The State may not make a grant for acquisition or construction purposes in a designated flood hazard area in which the sale of flood insurance is available under the National Flood Insurance Program unless the individual or family agrees to purchase adequate flood insurance and to maintain such insurance for 3 years, or as long as they live in the residence to which the grant assistance relates, whichever is less.
- a. Any previous grant recipient who may have been required to maintain a policy for a longer period of time (under previous regulations) but who kept it for at least three years, is deemed to have satisfied this requirement. This provision need be applied only during the 3-year period prior to a new disaster declaration.

- b. Adequate flood insurance, for IFG purposes, means a policy which covers \$5,000 building and \$2,000 contents (homeowners) or \$5,000 contents (renters).
 - c. If the grant recipient fails to obtain the required flood insurance, he/she must return to the state the amount of the grant received for acquisition and construction of insurable real and personal property, and the flood insurance premium.
 - d. If a grant recipient cancels a required policy within the 3-year period, he/she is ineligible for subsequent IFG assistance for insurable real and personal property for the remainder of the 3-year period, up to the amount which should have been covered by flood insurance.
 - e. The cost of the first year's policy is a necessary expense for those required under this section to buy flood insurance.
6. When an applicant is determined to be eligible for household items, furnishings or appliances, and when those items are an integral part of a mobile home or other furnished unit available for sale, the applicant may apply the funds awarded for those specific items toward the purchase of the furnished unit. If the applicant exercises his option to purchase a mobile home or other furnished unit available for sale, the State shall recognize that the grant recipient has properly met his necessary expenses or serious needs when verifying grant expenditures or conducting a State Audit.
- B. Specific Eligible Categories Assistance may be made available to meet disaster related necessary expenses or serious needs by providing essential items or services in the categories set forth below:
- 1. Medical or dental.
 - 2. Housing with respect to private owner-occupied primary residences (including mobile homes), grants may be authorized to:
 - a. Repair, replace, rebuild;
 - b. Provide access. If a grant request is received from more than one applicant to repair or replace a non-public facility that provided service to more than one individual or family, verification must show:
 - 1. All applicants have a common necessary expense or serious need;
 - 2. Any assistance provided by the Federal, State, or local government is taken into consideration when determining whether a need exists; and
 - 3. All applicants have jointly applied for assistance from other governmental programs such as the Small Business Administration Disaster Loan Program, and have been determined not to be qualified for such assistance.
 - 4. Proof of joint ownership must be provided. If the above factors are verified, and if joint ownership of the repaired or replaced facility is agreed to by all grant applicants prior to issuance of the grant, the State may award a grant to each applicant.

The grant recipients may then combine their grant funds to repair the private facility.
 - c. Clean or make sanitary;
 - d. Remove debris. Debris removal will be limited to the minimum required to remove health hazards, or protect against additional damage to the residences, or
 - e. Provide or take minimum protective measures required to protect such residences against immediate threat of damage. The residence is considered to be under immediate threat of damage,

when the disaster damage is causing a potential safety hazard and if not repaired, will cause actual safety hazards from common weather or environmental events.

- f. Minimization measures required by owner-occupants to comply with the provisions of 44 CFR Part 9 (Floodplain Management and Protection of Wetlands), to enable them to receive assistance from other means, and/or to enable them to comply with a community's floodplain management regulations.

3. Personal Property

- a. Clothing, or
- b. Household items, furnishings, appliances, or
- c. Tools, specialized or protective clothing or equipment which are required by an employer as a condition of employment, or
- d. Requiring, cleaning or sanitizing any eligible personal property item, or
- e. Moving and storage to prevent or reduce damage.

4. Transportation

- a. Grants may be authorized to provide transportation by public conveyance.
- b. Grants may be authorized to provide private transportation, or to repair/replace the principal means of transportation.

5. Funeral Expenses

Grants may include funeral and burial (and/or cremation) and related expenses.

6. Flood Insurance

A grant amount equal to the cost of the first year's premium may be allowed.

7. Estimates

Estimates required for eligibility determinations under the IFG Program for housing, personal property, and transportation will be provided by the Federal government. However, an applicant may appeal to the State if he/she feels the government estimate is inaccurate. The cost of an applicant obtained estimate to support the appeal is not an eligible cost.

8. Other

Should the State determine that an individual or family has an expense or need not specifically identified in this section, the State shall fully document the case file before approving such assistance.

C. INELIGIBLE CATEGORIES

Assistance will not be made available for any item or service in the following categories:

- 1. Business losses, including farm business and self-employment;
- 2. Improvements or additions to real or personal property, except those required to comply with minimization measures (see p. 24 of FEMA Handbook DR & R 18 Individual and Family Grant Program), or the requirements of local building codes.
- 3. Landscaping;
- 4. Real or personal property used exclusively for recreation;
- 5. Financial obligations incurred prior to the disaster; and
- 6. Reimbursement for labor and or service, performed by the applicant and persons living at the pre-disaster address.

VII. RELATIONSHIP TO OTHER ASSISTANCE PROGRAMS

The IFGP is a cooperative effort between Federal and State governments directed at alleviating disaster related suffering. When implementing the grant program, the State must first ensure compliance with Section 315 (Duplication of Benefits) of Public Law 93-288.

Information in IFG files will be released only to agencies or organizations who require it to make eligibility decisions for disaster assistance programs, or to prevent duplication of benefits, to State agencies responsible for audit or program review, and to FEMA or the General Accounting Office for the purpose of making audits or conducting program reviews.

A. Assistance Private or Charitable Organizations

The American Red Cross, churches, fraternal groups, employers, and other private agencies often provide disaster assistance to victims. Grants will not be made necessary expenses or serious needs for which assistance has been received or refused from any private or charitable organization, except for expendable items.

B. Insurance

Proceeds received as a result of an insurance claim flood, homeowners, automobile, health, etc. must be considered as assistance from other means when determining grant eligibility and grant amounts. When determining the amount of assistance to provide to an applicant who is entitled to insurance benefits, it will be presumed that any insurance settlement which the family receives is first used to reduce the verified necessary expenses and serious needs by category, Life insurance proceeds are considered a resource of the individual and family, and therefore, should not be considered when determining eligibility for the IFG Program.

C. Temporary Housing Assistance (FEMA)

Eligibility for assistance is based on need, defined by displacement and lack of adequate insurance coverage or resources to immediately satisfy adequate alternate housing needs. A recipient of temporary housing assistance may receive benefits such as home repair, transient rentals, mobile homes, and furniture items. (The furniture items may be purchased, leased, leased with a time purchase option or obtained from federal stocks and provided on a loan basis for the duration of temporary housing assistance.)

D. Small Business Administration (SBA)

Grant applicants who have a necessary expense or serious need for repairs/replacement of real or personal property or transportation must first apply to SBA for loan assistance and be determined ineligible, or the assistance provided must be insufficient, before grant eligibility can be determined. An SBA loan is considered a form of Federal assistance even though the obligation to repay exists, thereby making it different from a grant which does not have to be repaid. Therefore, an applicant who has been approved of a Small Business Administration loan to meet a specific need or expense is not entitled to a grant for the same items of need, unless the amount received is insufficient to meet the necessary expenses or serious needs.

E. Farmers' Home Administration

Farmers' Home Administration assistance is essentially the same as Small Business Administration and should be administered accordingly with one important difference: Farm losses associated with the farm business, such as crops, machinery, livestock, and fences are not eligible for grant assistance. Emergency loans for home and personal property needs to be considered.

F. Internal Revenue Service

Grants received under this program are considered by the State Tax Board and the Internal Revenue Service and payments under social benefit programs for the promotion of the general welfare, and therefore, they should not be included in the calculation of gross income.

VIII. ORGANIZATION AND FUNCTIONS

All State agencies charged with responsibilities under this Plan will insure compliance with Section 2205.13, Non-Discrimination in Disaster Assistance, and Section 2205.15, Duplication of Benefits of the FEMA Regulations. The agencies designated will perform the following functions:

A. Establishing Application Centers and Application Taking

FEMA will be responsible for staffing DACs with registration and application taking staff.

The State will supply one or two (as needed) knowledgeable IFG representatives at each DAC to answer applicants' questions that the registrar cannot answer, and to provide technical program guidance to other agency personnel. The application form will be the Disaster Assistance Registration/Application (FEMA Form 90-69, April, 86).

The State will receive the IFG copy of the FEMA Form 90-69 for each registrant. Not all of these forms will constitute an application for IFG. The State will consider an IFG application:

1. When it receives a FEMA Form 90-69 which:
 - a. Has the "applicant's certifications" signed, and.
 - b. Has items c(3) and/or c(4) completed, and
 - c. Is accompanied by an SBA Summary Decline (SBA Form 1363).
2. When the State is notified that an applicant who has submitted an SBA application;
 - a. Has been declined by SBA, or
 - b. Has been approved for a loan, but still has unmet necessary expenses and/or., serious needs

Only completed application will be registered into the State system and reported by FEMA.

FEMA Forms 90-69 which are pending a loan disposition by SBA will be considered only potential applications and will be maintained in separate (manual) control files.

Following closure of the DACs, FEMA staff will continue to register applicants and take applications as long as the DFO is open, at locations determined in consultation with the State and SBA. Once the DFO closes, FEMA staff will take applications (assuming they can still be filed timely or have extenuating circumstances)

over the telephone or through other appropriate means.

(Procedures for continued acceptance of late applications beyond the 60-day application period will be provided under separate cover for each disaster operation.)

- B. Interviewing Applicants, Receiving Grant Applications
 1. FEMA will be responsible for interviewing applicants and receiving applications.
 2. The FEMA interviewer at the DAC will fully explain the scope and purpose of the program to each applicant and will ensure that each applicant addresses the specific needs or expenses for which he or she is seeking assistance. An application will not be considered complete unless signed. FEMA will provide the State with the application form and all pertinent documents, and the GCO will establish a case file which contains those documents.
- C. Verifying Necessary Expenses or Serious Needs
 1. FEMA will be responsible for the verification of necessary expenses and serious needs in the categories of: verification information for IFG applicants who have received a summary decline by SBA. A field trip(s) will be made by a FEMA contractor/inspector as required, to verify the serious needs or necessary expenses for which assistance has been requested. Completion of the verification form (FEMA Form-90-56, April 86) is part of the application process, and will become a part of the case file. FEMA verifiers will make a single verification visit for both the Temporary Housing Program and the IEG Program.
 2. The State will be responsible for verifying the serious needs and necessary expenses in the categories of medical or dental, funeral expenses, transportation, and other categories; verifications for appeals and late applications or reverification for reconsideration when FEMA verifiers are no longer available. A field trip will be made as required by the State to verify serious

needs or necessary expenses for which assistance has been requested.

3. In those instances where the IFG Program personnel have questions about the data contained in the Form 90-56 or require clarification of data, the matter shall be referred to FEMA for resolution through the state/territory IFG Program Coordinator. Under no circumstances are changes to or alteration of the inspector's documentation on the Form 90-56 to be made by program personnel. If any corrections are required to the proposed award specifications and/or award letters, provided by the FEMA, Local Area Network, (LAN) Information Management System (IMS), such corrections shall be entered on the Information Update form (FEMA Form 90-67). The update form will be provided to FEMA for review prior to entry into the Information Management System. FEMA will provide the IFGP with corrected award specifications and letters as required.

4. Requirements

- a. Medical/Dental Expenses The cost of medical/dental treatment including surgeons, physicians, psychiatrists, dentists, hospital confinement, drugs, and special treatment which is occasioned by injury or illness directly caused by the disaster is eligible for a grant in an amount which is directly incurred by the applicant. All American Red Cross assistance, Veterans benefits, Blue Cross/Blue Shield, and other insurance payments received by the applicant must be deducted from the total cost. These costs and the fact that illness or injury was directly caused by the disaster must be documented by physician's or dentist's statements. Continuing and long-range treatment maybe eligible if specifically supported by such statements and with an estimate of the length and cost of such treatment. Eligible items also include eyeglasses, prescription drugs, dentures and prostheses lost in the disaster. Dollar amounts must be given for any directly incurred or expected medical care.

Verifiers must also obtain copies of bills or receipts and insurance payments for inclusion in the case file.

b. Housing Expenses

1. Allowable costs to repair, replace, or rebuild, and documentation of ownership and primary residence will be provided by FEMA on the FEMA Form 90-56, Inspection Report. Insurance settlement information will be provided by the applicant, or in the case of flood insurance, by the applicant of NFIP.
2. The need for minimization measures will be verified by documentation provided by the applicant. An estimate on work required or receipts for work completed will be provided by the applicant.
3. Other serious needs and necessary expenses under the housing category will be verified by FEMA or State inspection reports. An estimate on work required or receipts for work completed will be provided by the applicant.

c. Personal Property Expenses

1. Serious needs and necessary expenses will be verified by FEMA using the FEMA Form 90-56. Insurance settlement information will be provided by the applicant, or in the case of flood insurance, by the applicant of NFIP. Verification of Red Cross assistance will be provided by FEMA through the information Management System (IMS).
2. The need for tools, specialized clothing or equipment required as a "Condition of employment will be verified by a statement from the employer, provided by the applicant.

d. Transportation Expenses/Needs

The FEMA or State Verifier should state the need for repair or replacement of primary transportation as opposed to using public transportation.

1. Repair

The Verifier must ensure that the application is made on the principal means of transportation (example title and current registration end document). Insurance payments normally cover the cost of repairs to private transportation damaged as a result of a disaster. Copies of insurance payments will be reviewed and posted. An estimate for repair must be provided to the program by the applicant. If the FEMA or State Verifier determine that the repair bill or estimate is inflated or incomplete, the applicant will be required to submit a second complete estimate, pictures and/or other supporting documents. The Verifier will document this finding on the inspection report in the comments section and indicate that additional documentation is to be provided by the applicant.

2. Replacement

Applications for a grant for replacement shall be based on transportation needs occasioned by the total loss of a family or individual's principal primary means of transportation. The FEMA contractor will obtain from the applicant proof of ownership, market value at the time of loss current registration and licenses, tag number, insurance paid, and/or salvage paid whether to the individual or a financial institution, plus documentation of make, model, and year.

Where replacement of private transportation is determined appropriate, the grant amount will be based on the current NADA Official

Used Car Guide (blue book) value of the vehicle lost or 50% of the maximum allowable grant, whichever is less. IC safe and adequate transportation cannot be provided within the blue book limits or the lost vehicle is not listed in the blue book, the grant amount must not exceed 50% (\$2,500) of the maximum grant allowed.

In computing the amount awarded, any insurance settlement or salvage paid to the owner must be taken into account. If a person did not have a vehicle prior to the disaster but has a need for private transportation resulting from the disaster, the applicant must provide two (2) written estimates which should not exceed the blue book value of the vehicles identified on the estimates, and the grant amount must not exceed 50% (\$2,500) of the maximum allowable grant.

e. Funeral Expenses

Allowable costs for funeral expenses will be verified by receipts.

f. Flood insurance

The need for flood insurance will be verified when the Application/Registration form is completed using Flood Hazard Boundary Maps (FHBM) or Flood Insurance Rate Maps (FIRM). The cost of required insurance will be verified by the GCO.

g. Estimates

Estimates will provide statements to verify the cost of the estimate.

h. Other Expenses/Needs

Documentation by the applicant of any other necessary expense or serious need will be reviewed. The GCO will fully explain the circumstances and obtain from the applicant any documentation which will support the claim. Unusual circumstances

will be referred to the Regional Director for technical assistance.

i. Reverification .

A reverification may be required if additional serious needs or necessary expenses are discovered after the initial verification. This decision will be made by the GCO and will depend upon the circumstances of the additional need or expense which has been discovered.

D. Coordination With Other Agencies

1. The SBA will be responsible for providing the GCO with copies of verifications performed by SBA staff in the housing and personal property categories (including vehicles) for those applicants who submitted applications to SBA. The GCO will use the verification information provided by SBA to make an eligibility determination on those applicants who received formal decline from SBA and for those applicants whose approved SBA loan is for less than the SBA verified loss (after consideration of insurance settlements).
2. Coordination with SBA, as well as the National Flood Insurance Program, Temporary Housing, ARC and other volunteer groups will be achieved through the use of the FEMA DOB Master Log.
3. Temporary Housing, ARC and local volunteer groups will have provided the GCO with information on their efforts before the verified file is received for Administrative Panel review. Verification of an SBA loan decision and a flood insurance settlement, is applicable, must also be received prior to review by the Administrative Panel.
4. A Proof of Loss Statement” or “Insurance Settlement Agreement” will be obtained by the applicant to determine the dollar amount of items covered by insurance. The insurance settlement will be compared to the value of the verified necessary expenses and serious needs to ensure that grant assistance does not duplicate needs that are covered by insurance. The computation will be done separately for each category of

assistance. Non-insured items will be deducted from the proposed grant list before comparing the insurance settlement to that list.

Non-insured items will not be duplicated by the grant.

E. Eligibility Determination

All eligibility determinations shall be made in accordance with current Federal regulations and the approved State Administrative Plan. All files must be screened to identify any duplication of benefits before the case is reviewed by the Administrative Panel.

1. For the housing and personal property categories, the Administrative Panel will review the FEMA Form 90-56, determine eligibility, and document their decision on the prescribed procedure.
2. For all other categories of assistance, the Administrative Panel will review the narrative verification and supporting documentation determine eligibility, and document their decision on Territorial grant award sheet.

F. Notifying Applicants for Grant Approval/Disapproval

The Grant Coordinating Officer shall notify each applicant by letter of the eligibility determination made on their application. In grant approval cases, the letter will state the application has been approved; the amount of the approved grant; the purpose for which the grant has been made; and whether flood insurance is required. if flood insurance is required, Grant Award Letter will indicate to whom and by when the grant recipient must submit proof of purchase. In grant disapproval cases, the letter will state that the application has been disapproved and the reasons for the disapproval. In all cases, the letter will inform the applicant of the right to appeal the decision. Applicant appeals can be made either in person or in writing to the Appeals Officer within fifteen (15) calendar days of the date of the letter.

G. Disbursement Procedures

The GCO, upon receipt of completed grant award determinations will submit a voucher to the Department of Treasury authorizing Grant Award checks. The OCO will mail the checks and record and record the amount and the amount and date in the file. The Department of Treasury will use all available resources to ensure that all grants are disbursed within 21 working days after grant approval

H. Appeal Procedures

The Appeals Authority will consider each appeal within 7 calendar days of receipt. Each applicant will be notified by letter of the result of the appeal. All determinations by the Appeal Authority will be final.

1. Verification of Grant Expenditures

A random sampling of the disbursed grant will be selected by the Grant Coordinating Officer. The GCO will have the option to use the sampling process outlined below, or to select 5% of the case files, whichever is less. As a minimum, ten (10) case files will be reviewed.

	Total # of IFG	# Sampled
Recipients	Up from 200	30
	Up from 400	40
	Up from 800	60
	Up from 1,500	75
	Over 1,500	100

Field verification will be carried out by TEMCO or (selected state personnel). This review will be started when 50 percent of the expected number of approved applications have been disbursed, and must be completed prior to the completion of the IFG Program. The purpose of the review is to verify that grant funds are expended to meet the necessary expenses or serious needs for which the grants were awarded. Recoupment procedures will be initiated for cases in which grant funds have been used for unauthorized expenditures.

3. Duplication of Benefits

1. FEMA will provide the DOB information to the GCO as it is accumulated. If an award is made based upon faulty information provided by FEMA, the State will be held

harmless, up to 75% of the grant amount. In those cases where insurance payments, additional governmental assistance, or assistance from other means accrues to the applicant subsequent to the award of the grant, constituting a duplication of benefits, or grant award duplication, the Grant Coordinating Officer will assure that the dollar amount for items duplicated in the grant is returned to the State. This will be done by requesting the applicant to refund the amount due the State not later than 14 calendar days from the date on the letter.

2. If payment is not received by the 15th calendar day, a second registered letter will be sent to the applicant, by registered mail, stating that this is the second notice and the State must receive repayment on or before 7 calendar days from the date of this letter.
3. If payment is not received on or before the 8th calendar day from the second written notification, the file will be forwarded to the Attorney General with supporting documentation for possible litigation. The Attorney General’s Office will send at least one letter advising the applicant of the discovery, and request a return of the funds which were duplication of benefits. Additional recoupment action may be required.
4. For all letters the consequences of failure to return the money will be indicated to the individual.
5. If the state attempts, but is unable to recoup the portion of the grant which constitutes duplication, and can provide documentation of that attempt, FEMA may honor the State’s claim for the Federal portion.

IX. TIME LIMITATIONS

In the administration of the Individual and Family Grant Program authorized under Section 408 of Public Law 93-288, the following time limitations will be applicable.

- A. The Status Report will be submitted to region IX commencing the end of the first week of the

application period and during DFO operations and continue weekly until the ninetieth (90th) day of the program, and monthly thereafter until the program is closed. The report format will provide cumulative data, including the activities of the preceding report period. Reports, submitted weekly, will be prepared and processed so as to ensure submission to the FEMA Regional Director by not later than close of business Friday.

- B. Applications shall be accepted from individuals or families for a period of 60 days following the declaration, and for no longer than 30 days thereafter when the State determines that extenuating circumstances beyond the applicants' control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely way. Except if applicants exercising their responsibility to first apply to the Small Business Administration do so after SBA's deadline, and SBA accepts their case for processing because of "substantial causes essentially beyond the control of the applicant," and provides a formal decline or insufficient loan based on lack of repayment ability, unsatisfactory credit, or unsatisfactory experience with prior loans (i.e., the reasons a loan denial client would normally be eligible for IFG assistance), then such application referred to the State by the SBA is considered as meeting the IFG filing deadline. The State may then apply its own criteria in determining whether to process the case for grant assistance. The State automatically has an extension of time to complete the processing, eligibility, and disbursement functions. However, the State must still complete all administrative activity within the 270-day period described in this section.
- C. Any application filed after the sixty (60) calendar day period stated above must be reviewed by the Grant Coordinating Officer to determine whether the late filing was the result of extenuating circumstances or conditions beyond the control of the individual or family. If it is determined that good cause existed for the late filing, the application will be accepted and the case file documented as to the reason for

acceptance. If such determination cannot be made, the application will be rejected.

- D. The State will retain the original documentation supporting its claim or reimbursement of eligible costs for a period of not less than three (3) years from the date of final voucher payment.

X. FUNDING

The Federal grant to the State under this program includes 75 percent of the actual cost of grants to individuals and families, plus State administrative expenses not to exceed three percent of the total Federal grant. If the State is not immediately able to provide its 25 percent share of grants to individuals and families, FEMA may advance that share. The Governor's request for an advance of the State share will include a statement as to the specific actions to be taken to overcome the State's inability to provide its share, including a time schedule for repayment of the Federal advance.

Section 44 CFR 205.54(h) of FEMA regulations stipulates the failure to repay the advance of the State's share in accordance with the time schedule set forth in the Governor's request may result in the withholding of subsequent advances or may be offset against other funds to be made available to the State under PL 93-288.

Expenses incurred by the State in the administration of the IFGP may be reimbursed by the Federal Government not to exceed three percent of the total Federal grant. The amount payable for administrative expenses is computed by dividing the Federal share of meeting serious needs and necessary expenses by .97, and subtracted the Federal costs of meeting such expenses from the quotient. Funding for the Program, to include initial and subsequent drawdowns of funds, will be consistent with current procedures for use of Letter of Credit.

XI. MISUSE OF FUNDS

In those instances where Federal or State reviews, indicate that an applicant has misapplied grant-funds, is unable do verify proper expenditure, or has excess funds remaining, the following action will be taken:

- A. If an applicant misapplies grant funds or fails to retain receipts for grant expenditures, a home

visit will be accompanied to ascertain the purchase of items or services for which the grant was awarded. If proper expenditures cannot be verified, the case will be processed as indicated in paragraph C, below.

- B. An applicant may submit a request for reverification because of needs and expenses not identified in the original verification. In such instances a reverification will be completed prior to any further determination by the Administrative Panel.
- C. Once it has been determined that the applicant has no additional needs or expenses that would be considered eligible under the program, cannot verify proper expenditure of grant funds, or has misapplied grant funds, he/she will be notified at least twice by certified mail to return that portion of his/her grant within 20 days following the date of the notification. If the applicant fails to refund the excess funds within the prescribed limit following the second notification, the case file, completely annotated, will be forwarded to the GCO for processing through the SCO to the Attorney General for action. The State Attorney General's Office will advise the applicant in writing of the discovery of misused or unused funds, request return of the funds, and remind the applicant of the criminal and civil penalties stated in PL 93-288, including the offset of any future grants, if appropriate. In those cases where recovery has not been made, the program will establish a file and identify the applicant for reference in future programs for purposes of offsetting the amount owed or for denial of grants, as appropriate.
- D. In all instances where an applicant refuses to cooperate in the grant expenditure verification process, the case will be referred to the Attorney General through the SCO for action.
- E. Those cases forwarded to the SCO under A through C above will be reviewed by the GCO to determine if extenuating circumstances exist relating to the applicant's misuse of funds. If, in the GCO's determination, no such circumstances exist which would mitigate the prohibitions against misuse, the case file will clearly reflect such a determination and will be referred to the

Attorney General for action through the SCO. If the GCO determines that there are valid extenuating circumstances relating to an applicant's misuse of funds, these circumstances should be fully documented, to include appropriate comments and observations by individuals handling the case. In all such cases, full documentation will accompany the case file on the applicant forwarded to the SCO.

XII. MISREPRESENTATION AND FRAUD

A. Penalties

Pursuant to Section 317(a) of Public Law 93-288, criminal and civil penalties may be imposed in cases of misrepresentation and fraud. State and Federal government agencies are equally responsible for enforcement of anti-fraud statutes concerning the IFGP.

1. In cases of a falsified application, a fine of not more than \$10,000 or imprisonment for not more than one year (or both) shall be levied for each violation.
2. Concerning misapplication of funds, violators shall be subject to a fine equal to one and one-half times the amount of the grant.
3. A civil penalty of not more than \$5,000 per violation shall be levied against any individual who knowingly violates any provision of 44 CFR 205.54, the implementing regulation.

The above penalty provisions must be explained to each applicant at the time of application, and the applicant must acknowledge that he/she is aware of those provisions.

B. Federal/State Actions

The following actions will be taken in the event of a case of suspected fraud:

1. The GCO will notify the SCO that a case of suspected fraud exists. The SCO will then notify the FEMA Regional Director and direct the conduct of a preliminary investigation.
2. If the results of the preliminary investigation warrant further action, the SCO will forward the case to the State Attorney General for investigation, and simultaneously forward a

copy of the preliminary investigation to the FEMA Regional Director. Upon determining that fraud exists, the State will investigate the possibility of taking legal action or as a minimum advising the applicant that the State Attorney General’s Office has discovered fraud and may request a return of the funds, reminding the applicant of the criminal and civil penalties stated in Public Law 93-288, including offsetting or denying any future grants. An option open to the State is the use of a collection agent to recover funds owned by the State. The expense should be balanced against the expected recovery.

3. The FEMA Regional Director, after obtaining concurrence of the FEMA Associate Director, SLPS, will forward the results of the investigation to the Inspector General through the District Inspector General with all pertinent information. The Inspector General will determine whether the matter warrants referral to the Department of Justice, and shall notify the Regional Director and the District Inspector General.
4. If any IFGP State employee is under investigation for theft or misuse of program funds, the SCO shall notify the FEMA Regional Director of the case facts and the actions being taken by the State to investigate the matter. State law shall govern, if the State fails to pursue the matter properly, the funds involved for those specific cases may be suspended by the Regional Director.
5. Since State and Federal agencies are responsible for enforcement of State and Federal antifraud statutes respectively, the State and Federal governments may prosecute the same criminal act, and may coordinate as they deem appropriate.

XIII. REPORTS

The Directors of all designated agencies will provide the State Coordinating Officer with such reports as they may require, in addition to those listed herein.

XIV. AUDITING

The State will ensure financial audits are performed in accordance with the Single Audit Act of 1984. All disbursements for which the State requests reimbursement will be subject to Federal audit.

XV. ADMINISTRATIVE PLAN REVIEW

The Regional Director will review the Plan for each disaster for which assistance is requested to ensure that the requirements of Federal Regulations have been met. The Regional Director may defer approval of the Plan until any deficiencies have been corrected. Additionally, the Regional Director shall review the Plan on a yearly basis in January.

MANAGEMENT GUIDE

Management of the IPG Program is the responsibility of the GCO. In some states that responsibility is delegated either totally or in part to one or more “program managers” or “assistants”. The organizational structure for American Samoa is described in Section V. Responsibilities.

Because the IFG Program is a disaster relief program, it is not by nature an on-going operation with staff, offices, equipment and an identity which includes relationships with other State and local agencies, except when the Governor has requested and the President has made a major disaster declaration. However, once such a declaration is made that includes IFG assistance, many demands are placed upon the GCO and any others responsible for management of the program. The program immediately becomes a major focus of attention for disaster victims who have serious needs, for which IFG represents the only recourse. The program must be implemented quickly to meet those needs in coordination with other programs, including the FEMA Temporary Housing Program, the Small Business Administration Disaster Loan Program, the American Red Cross, and others. In addition to providing assistance quickly, the GCO also has the responsibility to ensure that it is provided in accordance with Federal regulations and the State IFGP Administrative Plan. These constraints, along with others, present a substantial management challenge for the GCO and his staff, particularly during the first 7-10 days of implementation.

Issues which must be immediately addressed include:

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1. Approval of the State IFG Administrative Plan. Federal regulations require approval of the Plan by the FEMA Regional Director for each disaster. Since the State does not operate the program on a continuous, year-round basis, changes in regulations and national policy, changes within State agencies, and other factors must be addressed before the plan can be approved
2. Staffing. Although the advent of the Combined Verification Process (CVP) and the Information Management System (IMS) have greatly reduced the burden on the State to staff the program, a considerable need still exists to manage, supervise, review cases, make eligibility determinations, conduct verifications (Medical! Dental and Funeral categories), set up and process case files, prepare reports, write policy memoranda and amendments is the Administrative Plan, train staff, perform reception and clerical functions, answer inquires, conduct floodplain management reviews in flooding disasters, conduct reconsideration and/or appeals, etc. An early and firm commitment of adequate staff on a full-time basis with provisions for overtime for key personnel is critical.
3. Training. All staff must be thoroughly trained to carry out their assigned duties effectively and professionally in accordance with Federal regulations and the Administrative Plan. Initial training of staff should be comprehensive and should be attended by employees at all levels, if the State is nit prepared to provide adequate training, then technical assistance should be requested from FEMA.

In addition to the initial training, clarification of program policies and procedures should be provided to all staff through regular and periodic staff meetings and the issuance of written program clarifications and guidelines, throughout the operation of the program. Since eligibility determinations, appeal decisions, program audits and other evaluations of the program are based on the same criteria, written guidelines are essential.

Staff should be provided with: written materials for reference in the performance of their duties, including the IFG Administrative Plan, DR+R18, 44 CFR Part 205.54 and documents promulgated by the State for administration of the program. Additional copies of Federal applications can be obtained from FEMA. Administration of the program “by word of mouth” causes misinformation and undermines the integrity of the decision-making process and should be avoided.

4. Information Management System (IMS) IMS provides valuable assistance to the IFG Program through compilation of duplication of benefits information, coordination of document distribution among major agencies, production of notification letters and specification sheets for the housing and personal property categories, and generation of various reports. Coordination with IMS will greatly enhance management capabilities and accelerate the delivery of assistance to disaster victims. However, it should be noted that IMS is a relatively new component of the FEMA system of coordination and is in a process of development. It is expected that its capabilities will be expanded with each operation.
5. Pricing and Selecting Additional Items. Final decisions about selection and pricing of items that will be considered serious needs should be made only by staff who have received thorough training in the program, in addition, careful consideration should be given to any items added to the FEMA Form 90-56, Inspection Report, since such items may be routinely considered serious needs for all applicants.

Note: items which may represent serious needs for some individuals and families but would not be considered a serious need in most situations, would be better evaluated on a case-by-case basis in the “Other” category of assistance.

Data used to develop prices for all items on the Inspection Report (FEMA Form 9056) should be well documented, with steps taken to ensure reasonableness and accuracy when establishing average costs. The State’s policy for establishing prices for items not included on the Inspection

Report (e.g., items approved under the Medical, Dental, Funeral, Transportation, and Other categories), should be clearly stated in the Administrative Plan to ensure that all staff responsible for such decisions can make consistent determinations.

6. Contract Inspectors'/Verifiers'

Briefing. In terms of impact upon the overall program, this meeting will be the most important involving IFG staff. In preparation for the briefing, IEG staff should become totally familiar with the FEMA Form 90-56. Inspection Report, and the verifications requirements of the IFG Program. Although the State will not be held accountable for the Federal portion of grants awarded as the result of erroneous information obtained by FEMA verifiers, the State will be responsible for its own share of such awards. For this and other reasons, the State should ensure that its requirements are communicated clearly. Standards for verification will be set at this briefing which will impact case decisions throughout the program.

7. Reports.

Periodic reports are required during program operations. Notable among these are the IFG Initial, Weekly and Final Statistical Reports. While the IFG Reports provide valuable management data, they require the development of information gathering procedures at the outset of the program. If the establishment of these procedures is delayed because of a lack of commitment to adequately staff the program, the difficulty in compiling accurate reports is compounded and inevitably will interfere with other aspects of the operation. If the State does not have the ability to produce these or other necessary reports prior to beginning the program, procedures should be developed immediately after the program's implementation.

The elements discussed above do not constitute all of the issues which must be addressed by those responsible for the management of the IEG Program, even in its beginning phase. Logistical concerns regarding office space transportation

and accommodations, equipment and supplies, among others, must be addressed. Caution should be exercised therefore, against concentrating too many responsibilities in the hands of a too small program management staff. Particularly in the early stages, responsibility should be sufficiently delegated to ensure all vital elements of the operation are properly developed and the program is put on a solid foundation. Technical assistance is available through the FEMA Individual Assistance Officer and the IFG Coordinator and should be utilized.

APPENDIX B

COMBINED VERIFICATION

Individual and Family Grant (IFG) and Temporary Housing (TH) Programs

OVERALL GOALS

In restructuring the policies and procedures for the IFG and TH Programs the following are FEMA'S guiding principles:

) Uniformity

) Consistency

) Fairness

) Timeliness

Responding to these, the more specific goals for the programs are:

) Improving program response time

) Simplifying program procedures

) Simplifying eligibility determination

) Maximizing the recipient's use of funds

) Decreasing the State's administrative cost and burden

) Reducing possibility for duplication of benefits

Several initiatives have been developed and combined into a comprehensive system of program delivery. Some of the activities are undertaken by FEMA, while others remain the States' responsibility. The IFG Program is now less staff intensive and less costly for States, more staff intensive for FEMA, and

much less complicated for individuals and families. These initiatives are grouped into four categories: automatic application procedures, condensed verification, streamlined estimating techniques, and new grant award procedures.

DESCRIPTION OF NEW POLICIES AND PROCEDURES

IFG applications

1. Policy. Applications are automatically filed when IFG needs are indicated; otherwise, no IFG application is made. The State no longer needs application personnel.
2. Procedures. IFG applications are now taken at the Disaster Application Centers (DACs) when non-SBA type needs are indicated (medical/dental, funeral) and when the applicant receives a summary decline the DAC from the SBA. Otherwise, no application is taken.

Pricing and Inspections

1. Policy. FEMA’s inspection contractor will perform all inspections for both the Temporary Housing IFG Programs, with a few exceptions. Applicant supplied estimates are no longer required; and a few, if any, home visits by the State will be required. Portions of the inspection report will be conducted on a “generic” basis.
2. Procedures

A. Real Property

- (1) The State will establish what items it considers basic for a kitchen and living, dining, and bedroom(s). The State will also establish the total dollar value of personal property required for each type of room.

Based on the verification code system established for indicating extent of damage to furnishings, the State will need to assign a percentage value of a total award for the X and Y codes. The Z code represents a 100% award.

The codes for furniture verification are:

X = Repairable

Y = Some item is repairable, some need to be replaced

Z = Most/all items should be replaced

N/A = Not affected

The total dollar value for each room (Z) and the percent for X and Y will be entered into the computer. When the verifications information is entered into the computer, the IFGP will be provided with priced specifications for award.

- (2) Inspection. The inspection process will not provide an item-by-item description of damages. Extent of damage to furnishings will be by code (X, Y, Z, or N/A) as explained above.

Note: The Temporary Housing Program provides an allowance for furniture and will analyze the personal property verifications to determine the amount of the allowance. The allowance will be for rental. of furniture for a temporary housing unit.

B. Personal Property/Clothing.

- (1) Pricing. The State will establish a maximum clothing allowance for each of the four categories listed on the inspection report (# 19). Based, on-the verification code system established for indicating extent of damage to furnishings, the State will need to assign a. percentage value of a total award for the X and Y codes. The Z code represents a 100% award.

The codes for clothing verification are:

X = Cleaning only

Y = Home essential clothing should be replaced

Z = Most/all essential clothing needs to be replaced

N/A = Not affected

The maximum clothing allowance for each category (Z) and the percent for X and Y will be entered into the computer. When the verification information is entered into the

computer, the IFGP will be provided with priced specifications for award.

- (2) Inspection. Extent of damage to clothing will be by code (X, Y, Z, or N/A) as explained above. The letter code will be accompanied by a numeral representing the number of persons in the category.

C. Appliances/Mechanical Devices

- (1) Pricing. The State will establish what items (from Block 20 of the inspection report) are necessary. The State may add items, as appropriate. Two prices will be established for each item, one for repair and one for replacement. All repair and replacement prices are entered into the computer. When verification information is entered into the computer, the IFGP will be provided with priced specifications for award.

The codes for appliances/mechanical device verifications are:

X = Repairable

Z = Must be replaced

N/A = Not affected

- (2) Inspection. The inspection will indicate extent of damage-by code (X, Z; or (N/A) as explained above. If an applicant did not have or own the item, but now needs one of these or any other item, it will be recorded in the comments section, block 24; of the inspection form

D. Medical/Dental and Funeral. The State continues to be responsible for these verifications. The inspector will instruct any family which does not have written estimates or receipts to obtain and send them to the IFG Program. He/she will give the family a self-addressed envelope for this purpose. State staff will then follow up with the applicant.

E. Work Equipment. This category pertains mostly to the IFG Program. Furthermore it applies only to employment-by-others, not to self-employment, as that would be a business and not eligible under the IFG Program. This item

includes tools, specialized or protective clothing, equipment required by an employer, hut the applicant's responsibility to purchase and maintain (such as books, supplies, etc.), although these could be an extension of personal property noted in the comments section. Either way of reporting these is appropriate. The inspector should list the item, add a brief description of the requirement and the dollar value if a receipt or estimate is presented; example: nurse's uniform, required by hospital at applicant's expense, \$50 (paid receipt). Make sure all receipts are dated so as to relate to the disaster event and that the loss/need is disaster related. This will come out during the interview.

Duplication can occur between the grant award and SBA loan assistance. Therefore, the State should check with the SBA before awarding this kind of assistance if the client was eligible to apply to the SBA. A check with the Red Cross is also necessary.

If the applicant does not have a receipt or estimate, provide the IFGP self-addressed envelope and inform the applicant to send in the documentation. If this is done, check the appropriate block to indicate that the State should follow up.

F. Moving and Storage. This is an IFGP item only. Expenses incurred to move and store personal property away from the threat of damage (such as to a storage facility on high ground) may be eligible, regardless of whether the residence was then actually affected by the disaster. The inspector should interview the applicant briefly, explaining this concept, obtain a brief description of the requirement, state how it is disaster related, and note the dollar figure if a receipt or estimate is presented: example: moved first floor furniture to warehouse: receipt from Sam's Warehouse, \$50. Make sure all receipts are dated so as to relate to the disaster and that the need to move or store was disaster related. This will come out during the interview.

G: Transportation. This information is for the IFG Program, If the number of usable vehicles is one or more, the presumption is that the family does not need additional transportation. If during the

interview it becomes apparent that a family might need more than one car, the inspector should thoroughly document the reasons. Otherwise, line items b, c, and d are not required.

If there are no usable vehicles, information will be required as to the status of the other vehicles the family had. Since a transportation award is sometimes based on actual repair cost and sometimes on a maximum allowable figure as determined by the State (usually whichever of these figures is lower), the inspector's determination as to whether the vehicle is actually repairable is important. The inspector should interview the applicant briefly, obtain whatever receipts or official estimates are available, and determine whether the loss of or need for the vehicle is disaster related (23,c). The dates on the receipt or estimate should relate to the disaster event.

If the applicant does not need transportation, write "none needed" in 23, c.

If the applicant does not have a receipt or official estimate, the inspector will provide the IFGP self-addressed envelope and inform the applicant to mail the documentation to the Program as quickly as possible. If this is done, check the appropriate block to indicate that the State should follow up.

Duplication can occur between the grant award and SBA loan assistance. Therefore, the State should check with the SBA before awarding this kind of assistance, if the client was eligible to apply to the SBA.

- H. Inspection Report. The State will receive a copy of the inspection report, a priced out listing of damages to real property a copy of the MR award if applicable a proposed listing of those specific real estate items that are not MR eligible but are normally IFGP eligible with dollar values, and a copy of the listing of personal property and transportation amounts that are potentially IFGP eligible. The State can then make an eligible determination on these items. The system can also provide a grant award document.

Grant Awards

1. Policy. Grant awards will be written in a general way. Awards will be allowances, to spend among the allowable categories.
2. Procedures. When the State receives the items mentioned above, it will make eligibility determinations. When the inspection report indicates a dollar value of damage that exceeds the minimal repair (MR) scope of work (which is now \$5,000 in most cases), then immediate grant awards can be given. This is subject to the following conditions:

The applicant is owner-occupant of the home, as verified by the inspector: and

The applicant has a summary decline from the Small Business Administration: and

The applicant is uninsured for housing and personal property. Statements from the applicant on the registration form and a check of the NFIP coverage will reveal this information.

Actual dollar values per item or per category will not be included. Even if the State has "not to-exceed" type pricing for certain items, the applicant will not be limited to spending only that amount for that item, unless it is the only grant item awarded. When the "immediate" grant award is given, based on total destruction or major damage, the family will still be allowed to spend the money on any of the IFGP eligible categories listed in the award notification. The grant award approach eliminates recovery of funds procedures against an applicant who may not have spent the exact amount of money awarded by the State for a specific item or service. The problem of misapplication will largely be eliminated, along with the associated voucher analysis/audit problem. A sample grant award document to explain this concept is attached.

Applicants will be able to appeal for more money by submitting receipts for the items/ services they used their award and insurance proceeds for and by stating what other expenses/needs must still be obtained.

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Attachments

GENERIC ROOM PRICE GUIDE

Prices cover:

1. Baseboards, LF (remove, reinstall new).
2. Sheet rock, SF (remove, reinstall new, tape, finish with base coat).
3. Insulation, 2 walls per room, SF (remove, install new).
4. Window trim, 15 LF each (remove, install new).
5. Door trim, 1 LF each (remove, install new).

SF codes:	Water level codes:
A = 50 SF	A = less than 6 inches
B = 100 SF	B = more than 6 inches, less than 4 feet
C = 150 SF	C = more than 4 feet, less than ceiling.
D = 200 SF	D = over the ceiling
E = 250 SF	
F = 300 SF	
G = 350 SF	
* no generic room assistance.	

Worksheet for Item 18. Personal Property/Furnishings

(Code X, Y, Z, NA)

Award Amount

LRM _____

KIT _____

DRM _____

BR 1 _____

BR 2 _____

BR 3 _____

BR 4 _____

BR 5 _____

Definitions

X = Damaged, but repairable, Award _____%

Y = Damaged; some items repairable, some should be replaced.

Award _____%

Z = Damaged; most/all items should be replaced.

Award _____%

NA = Not affected. Award nothing.

Computations

LRM =

BR2 =

KIT =

BR3 =

DRM =

BR4 =

BR1 =

BR5 =

Worksheet For Item 19. Personal Property/Clothing (Code X, Y, Z, or NA)

Amount Award

a. Male over 12 _____

b. Male 1-12 _____

c. Female over 12 _____

d. Female 1 – 12 _____

Definitions

X = Cleaning only, Award _____%.

Y = Some essential clothing should be replaced. Award _____%.

Z = Most/all essential clothing should be replaced. Award _____%.

NA = Not affected.

Computations

Male over 12 _____

Female over 12 _____

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Male 1-12 _____
 Female 1 – 12 _____

Worksheet for Item 20. Appliances/Mechanical
 Devices

(Code X, Z)

Award Amount

Range _____

Refrigerator _____

Washer _____

Dryer _____

Freezer _____

Air Conditioner _____

Electric Fan _____

Vacuum Cleaner _____

TV Set _____

Lawn Mower _____

Telephone _____

Miscellaneous Items _____

Definitions

X = Repairable. Award the repair cost.

Z = Must be replaced. Award the replacement cost.

Computations

Item Repair

Replace	Replace	Item	Repair
---------	---------	------	--------

Range _____

A/C _____

Refrigerator _____

Elec. Fan _____

Washer _____

Vac. Clnr. _____

Dryer _____

TV Set _____

Freezer _____

Lawn Mower _____

Telephone _____

REVIEW PROCESS — INSPECTION REPORT
 (FEMA FORM 90-56)

When the IFG Program is implemented under the Combined Verification Process (CVP) and the Information Management System (IMS), the State will develop procedures for reviewing the FEMA Form 90-56, Inspection Report. This review is required to make eligibility determinations for IFG cases, and to provide IMS with information required to process specification sheets and notification letters for the housing and personal property categories of assistance.

Prior to processing any IFG applications, a meeting will be held to decide what type of coordination in the review process will best satisfy the requirements of the IFG and Temporary Housing Programs. The meeting will be attended by the State IFG staff designated by the GCO and FEMA IA staff; including the IMS Officer, TH Officer, Project Monitor, and IFG Coordinator. The goal of the meeting is to establish a coordinated review process that will make efficient use of program staff(s) and ensure timely and effective delivery of assistance.

Review instructions already Included in this Appendix should be presented and discussed at the meeting IMS capabilities may vary from one disaster operation to the next, so it is possible that procedures planned by the State may need revision when the program is actually implemented. Staff responsible for writing amendments to the Administrative Plan should also be in attendance, so that required changes can be made and the revised instructions provided to staff responsible for the inspection report reviews. The FEMA IFG Coordinator will be available to provide technical assistance to the State.

Included in this annex are sample instructions for the review of the FEMA Form 9056 inspection Report.

REVIEW OF FEMA FORM 90-56, INSPECTION
 REPORT

The 90-56 will be included in an IFG packet consisting of:

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1. Application/Registration (FEMA Form 90-69) - green copy.
2. Inspection Report (FEMA Form 90-56) -white and green copies.
3. SBA Summary Decline (SBA Form 1363)-yellow copy, or SBA Loan information Form and SBA Form 739, Field Inspection Report and attachments.

NOTE: SBA forms will be included in packets where housing and personal property needs or expenses are addressed.

STEP A Compare control numbers and names to ensure that all documents in the packet identify the same applicant.

STEP B Application/Registration (FEMA Form 90-69).

1. Ensure that items 1, 2, 3, 9 and 10 are legible.
2. A16-18: If “yes” block is checked, refer to C[4] and D3. If C[4] is checked, verification documents for Medical/Dental and/or Funeral categories are required if D3 is checked, a referral to ARC was made.
3. B2: If flood insurance is indicated, settlement information is required (see 24 Comments on page 2 of 90-56).
4. C[1]: if checked, send packet back to IMS unless SBA documents indicate a decline or loan with unmet needs.
5. C[2]: if checked, send back to IMS.
6. C[3]: If checked and SEA Form 1363 is not present, send back to IMS. If SBA Form 1363 is present, continue with review.
7. C[4]: If checked, follow procedures in the IFGP Administrative Plan for determining eligibility for Medical/Dental and Funeral categories.

STEP C Inspection Report (FEMA- Form 90-56).

NOTE: 8-13 apply to homeowners only 18-24 apply to homeowners and renters.

1. Ensure that the overall damage assessment is consistent. Compare blocks 5, 12, 13, 18, 19, 20 and 24. if inconsistencies appear, discuss with the Program Manager.
2. Ensure that 8 and 9 are complete.
3. Refer to 10. If the home was destroyed, there was no insurance, SBA declined loan assistance and the applicant is the owner-occupant, a \$5,000 grant may be awarded. Place a check (X) in block 399. Write in 24 (page 2, Comments) “399 Real Property.” Highlight the entry in 24 with a YELLOW marker.
4. 12: To approve, highlight entries in either column A or B with a YELLOW marker. To disapprove or change any entry, draw a single line through the entry; initial, date and explain Comments (24).
5. 13: To approve, highlight entries with a YELLOW marker. Do not highlight code “A” for water level. To disapprove or change any entry, draw a single line through the entry; initial, date and explain in Comments (24).
6. 18-20: Ensure that the number of bedrooms and sets of clothing are consistent with the dependent household composition listed in 19 of FEMA Form 90-69. Ensure that all entries are clearly distinguishable as “x”, “y” or “z”, if not clearly distinguishable or if any “y” entries are made in 20, return to the Program Manager. To approve, highlight entries with a YELLOW marker. To disapprove or change any entry, draw a single line through the entry; initial, date and explain in Comments
7. 21-22: If actual costs are recorded by the verifier, amounts may be approved up to program limits. If estimates are indicated, ensure that the “envelope provided” box has been checked. Make appropriate contacts and record any discussions or attempts to contact the applicant or third parties on the Record of Contact Sheet.
8. 23: If actual costs are recorded by the verifier, amounts may be approved up to program limits. If estimates are indicated, ensure that the “envelope provided” box has been checked. If the need to replace or provide a vehicle is

verified, the maximum allowable is fifty percent (50%) of the maximum grant. A lower amount can be used if the applicant requests/verifies a lower figure.

9. 24: Enter deductions for assistance provided by ARC or for proceeds of insurance settlements. ARC assistance will be listed on the Red Cross Report. Enter the amount to be deducted, the category from which the deduction is to be made and the appropriate IMS code (e.g. “19Z Deduct 500 ARC”). Highlight the entry with a YELLOW marker. Insurance settlement information will be included in Comments (24) or on other documents in the packet. Enter the amount to be deducted, the category from which the deduction is to be made and the appropriate IMS code (e.g. “12Z Deduct 2,000 insurance Proceeds” and “20Z Deduct 1,000 Insurance Proceeds”). Highlight the entry with a YELLOW marker. To change an entry, draw a single line through the entry; initial date and explain in Comments (24) if assistance is indicated but the deduction is not made, explain in Comments (24).
10. 24: Review this section and refer to appropriate items to ensure that all comments by the verifier and the reviewer’ have been addressed.
11. Sign and date form at DAC. Submit to IMS for data processing.

After being processed by IMS, notification letters and specification sheets will be printed

APPENDIX E

APPEAL AUTHORITY GUIDE

I. APPEAL PROCEDURES

It is the objective of the IFG program to deal with serious needs and necessary expenses incurred by individuals or families in a natural disaster situation. Therefore, it is imperative that the Appeal Authority, as the last resort of the applicant, have a thorough knowledge of the program.

The appeal procedure is as follows:

- A. The Grant Coordinating Officer shall notify each applicant, by letter, of the applicant’s eligibility determination. In grant disapproval cases, the letter will state that the application (or portions thereof) has been disapproved and include the reason(s) for the disapproval.
- B. In all cases, the letter will inform the applicant of the right to appeal and how to file an appeal.
- C. The appeal can be made either in person or in writing.
- D. Appeals must be made to the Appeal Authority within fourteen (14) calendar days from the date of the disapproval letter set to the applicant by the Grant Coordinating officer.
- E. The Appeal Authority will consider each appeal within twenty (20) calendar days of receipt of appeal.
- F. The Appeal Authority will contact the Grant Coordinating Officer to request the case file.
- G. All appeals will be considered on the basis of eligibility criteria in the Administrative Plan.
- H. Determinations by the Appeal Authority will be based upon:
 1. A review of the eligibility determination.
 2. Consideration of any new information provided by or on behalf of the applicant in the appeal.
 3. A reverification, when necessary, to resolve any discrepancies between the information submitted in the appeal and the verification on which the eligibility determination was made.

NOTE: Reverifications will be conducted by FEMA or the State in accordance with Section VIII, Section C of the Administrative Plan.

- I. All determinations by the Appeal Authority will be final.
- J. Each applicant will be notified by letter of the result of the appeal.
- K. Strict compliance with Public Law 93-288, Section 311, must be ensured. II. Forms and procedural instructions are included in the attachments to the Administrative Plan.

III. Conclusion

The Appeal Authority must be an impartial person(s) totally familiar with all aspects of the Individual and Family Grant Program and must exercise discretion, using judgment and experience in consideration of appeals. The goal of the IFG program is not to indemnify losses, but to assist in meeting serious needs or necessary expenses of disaster victims.

APPENDIX F

FLOODPLAIN MANAGEMENT DECISION-MAKING PROCESS

- A. This appendix will describe the State’s mechanism for complying with Presidential Executive Orders 11988 and 11990, Floodplain Management and Protection of Wetlands, and with FEMA Regulation 44 CFR Part 9.
- B. If any of the actions described below are required, are located in the floodplain, a floodplain management review must be completed. This includes actions that are to be taken, or have been taken, by the applicant before grant assistance is approved.

Required

Purchase of mobile home and/or site development.

Restoring/requiring private bridge.

Building a new private bridge.

Pooling grants to repair/provide private bridge.

Structural protective measures.

- C. The floodplain management review involves an eight (3) step decision-making process. Each

step is identified below along with a brief description of how the State will comply.

Step 1:

Determining whether the proposed action is located in wetland and/or the 100-year floodplain (500-year floodplain for critical actions), or whether it has the potential to affect or be affected by a floodplain or wetland.

State Comment:

These determinations are made at the Disaster Application Center using the Flood Hazard Boundary maps. A determination is made on each applicant.

Step 2:

Notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland, and involve the affected and interested public in the decisionmaking process.

State Comment:

This action will be accomplished by using the standard notice form attached and labeled FL-1. The content of the notice shall include:

- a) description of the action, its purpose and a statement of the intent to carry out the action;
- b) statement that a map of the floodplain/wetland is available for inspection, the locations and contact information;
- c) a description of the type, extent and degree of hazard involved and the floodplain/wetland values present;
- d) identification of the official or organization responsible for implementing the action.

Step 3:

Identify and evaluate practicable alternatives to locating the proposed action in a floodplain or wetland (including alternative sites, actions and the “no action” option). If a practicable alternative exists outside the floodplain or

wetland, FEMA must locate the action at the alternative site.

State Comment:

This action will be accomplished through appropriate completion of the management analysis process and the use of the attached Form FL-2, which details alternatives.

For the restoration and repair of private bridges, alternative sites need not be considered. However, alternative actions and the “no action” alternative must be considered.

Step 4:

Identify the full range of potential direct or indirect impacts associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action.

State Comment:

See comment to Step 3.

Step 5:

Minimize the potential adverse impacts and support to or within floodplains and wetlands to be identified under Step 4 Restore and preserve the natural and beneficial values served by floodplains and preserve and enhance the natural and beneficial values served by wetlands.

State Comment:

For the most part this step would not be applicable because for all intended purposes, there would be no harm caused by the implementation of grants. However, for those cases involving new, or restored/repared private bridges, or the purchase of a mobile home, applicable codes and standards will be adhered to.

Step 6:

Re-evaluate the proposed action to determine first, if it is still practicable in light of its exposure to food hazards, the extent to which it will aggravate the hazards to others, and its potential to disrupt floodplain and wetland

values, and second, if alternatives preliminarily rejects at Step 3 are practicable in light of the information gained in Steps 4 and 5, FEMA shall not act in a floodplain or wetland unless it is the only practicable location.

State Comment:

This re-evaluation will be conducted by the GCO and the recommendation and completed file will be forwarded to the Regional Director.

Step 7:

Prepare and provide the public with a finding and public explanation of any final decision that the floodplain or wetland is the only practicable alternative.

State Comment:

Public notice would be issued. Notice will contain information that NFIP criteria, where applicable, have been met, there exists no practicable alternative and that any harmful effects of this action would be minimized where possible.

Final notice is not required when restoring private bridges.

Step 8:

Review the implementation and post-implementation phases of the proposed action to ensure that the requirements of the orders are fully implemented. Oversight responsibility shall be integrated into existing processes.

State Comment:

This action is implemented With FEMA Regional Director’s approval. The Development Planning Office will:

- a) Assure action is carried out.
- b) Verify compliance with Executive Order.
- c) Take remedial action where necessary.
- d) Consider floodplain management in State audit proceedings.
- e) Make appropriate information available to FEMA at time of program review.

DRAFT NOTICE

Notification is hereby given to the public of the intent of the Federal Emergency Management Agency (FEMA) to provide assistance for the purpose of restoring _____ at _____ which was damaged in the recent major disaster declared as a result of _____. This facility is located within the base floodplain and, therefore, is subject to review under the President’s Floodplain Management Executive Order. Public comment about restoration of this facility and the application of the Executive Order was invited by notice in this publication on _____.

Comments and other information received were fully evaluated by FEMA along with evaluation of social, economic, environmental and safety considerations. FEMA has consulted with State and local officials to insure compliance with applicable floodplain protection standards. FEMA has determined that the only practicable alternative is to locate this facility at its original location within the floodplain because _____.

The restoration of this facility will also incorporate certain measures designed to mitigate the effects of future flooding.

Interested parties may obtain further information about this action and its specific location at the Office of the Disaster Recovery Manager at _____

or by calling _____ between 8:00 a.m. and 4:00 p.m., Monday through Friday. Comments about this project should be submitted in writing to the above address by _____.

INDIVIDUAL AND FAMILY GRANT PROGRAM FLOODPLAIN MANAGEMENT ANALYSIS

APPLICANT: APPLICATION

NUMBER: _____

ADDRESS: _____

LOCATION OF PROPOSED SITE: _____

TYPE OF ACTION PROPOSED: (Check, then circle appropriate structure)

_____ Repair/Replace Private Bridge/Protective Structure

_____ Pooling Grants to Provide a Private Bridge

_____ Provision of Private Bridge/Protective Structure

_____ Purchase of Mobile Home

1. Is the site in the 100-year floodplain on a map issued by the Federal insurance Administration? Yes _____ No _____

Is it in a floodway or coastal high hazard area (V-Zone)? Yes _____

No _____

Can’t tell from map: Needs survey _____

2. Has this site been damaged in the past by flooding, and indicate the source of this information:

Yes _____

No _____

Don’t know _____

Source:

a. Presidential Emergency or Major Disaster Declaration? Date: _____

b. SBA Declaration? _____ Date: _____

c. FEMA Declaration? _____ Date: _____

d. State Response to Flooding? _____ Date: _____

e. Information from Local Officials/Citizens? Date _____

3. What alternatives to the proposed action are there? List each as (a), (b), (c), etc. and describe fully. Include discussion of other sites and other means of solving the problem and achieving the goal. Also describe the practicability of each alternative you identify in terms of environment, technology and cost of the alternative as compared to the original proposed action. (Attach separate sheet if required.)

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- 4. Describe the impacts that the proposed action and each identified alternative could have on the floodplain. (Attach separate sheet if required.)
- 5. Describe measures which can be taken to minimize the hazard of future damage to the structure or facility or harm to the owner, or to restore and preserve the floodplain values. Give reasons for the recommendations in terms of environment cost (give cost estimate), and technology. Associate each type of measure with the action to which it belongs. Give reasons for this determination. (Attach separate sheet if required.)

VERIFIER’S SIGNATURE _____

DATE: _____

ATTACHMENTS

- Application/Registration (FEMA Form 90-69)
- IFG Fact Sheet
- Inspection Report (FEMA Form 90-56)
- Proposed Award Specification Sheet
- Appeal Process Attachment
- State Grant Award Sheet
- Award Letter
- Medical/Dental/Funeral/Transportation/Other
- Award Letter Attachment (itemized List)
- Disapproval Letter - Housing/Personal Property
- Disapproval Letter - Other Categories
- Withdrawal Letter
- Appeal Decision Letter (Approved)
- Appeal Decision Attachment (Itemized List)
- Appeal Decision - Disapproval
- Recoupment Letter - First Request
- Recoupment Letter - Second Request

- Record of Contact Street
- DMIS - Initial Report and Instructions
- DMIS - Weekly Report and Instructions
- DMIS - Final Statistical Report and Instructions
- IMS Reports - IFG Program
- Codes for IMS Reports
- DOB Master Log/Alpha Listing - Sample

- 3. What alternatives to the proposed action are there? List each as (a), (b), (c), etc. and describe fully. Include discussion of other sites and other means of solving the problem and achieving the goal. Also describe the practicability of each alternative you identify in terms of environment, technology and cost of the alternative as compared to the original proposed action. (Attach separate sheet if required.)
- 4. Describe the impacts that the proposed action and each identified floodplain. (Attach separate sheet if required.) alternative could have on the
- 5. Describe measures which can be taken to minimize the hazard of future damage to the structure or facility or harm to the owner, or to restore and preserve the floodplain values. Give reasons for the recommendations in terms of environment cost (give cost estimate), and technology. Associate each type of measure with the action to which it belongs. Give reasons for this determination. (Attach separate sheet if required.)

Medical and Dental--When the insurance of the individual does not cover the victim’s costs of disaster caused injuries or illnesses, IFG may assist with the unmet portion.

Funeral - - If the victim died as a result of disaster caused conditions, with no burial insurance coverage, the IFG can assist the family with the general costs of funeral, burial (and/or cremation), and related expenses.

Flood insurance-- if the disaster victim lives in a flood hazard area, suffers damage caused by flooding, and receive an IFG award, he is required to purchase flood

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insurance as a contingency of the award. The IFG will authorize money for the first years minimum premium to provide \$5,000 structure/\$2,000 contents for a homeowner and \$5,000 contents for the renter.

Expenses that IFG cannot cover.

By law, the IFG award cannot be used for the specific uses below:

Replacement or repair of luxury items, decorative items, antiques, landscaping gardens, and real or personal property items used exclusively for recreational purposes.

Business losses, including losses to farm business and self-employment.

Improvements or additions to real or personal property, except as required by the building codes.

Debts incurred before the disaster.

Applying for grant assistance at the Disaster-Application Center.

The disaster victim applies at a Disaster Application Center (DAC) for assistance to

the IFG Program. The screening interview signals the registrar to make application to the program through a series of questions which guide the applicant into the proper program areas. The victim must first apply to the Small Business Administration (SBA) Disaster Loan Program and be found ineligible for reason of having no repayment ability, or have suffered disaster-related medical, dental, or funeral expenses. The IFG applicant will be contacted by the FEMA and/or State verifier for an “at home” visit. At the time of the home visit, the verifier will request copies of bills, damage estimates, deeds/ownership papers, etc., to document the needs of the applicant. It is the responsibility of the applicant to obtain all the required documentation in order that the IFG Administrative Panel may make a grant award.

APPEAL PROCESS NOTICE FOR AWARD LETTERS

APPEAL PROCESS

If you disagree with this decision and want to appeal, you must provide all of the following information IN

WRITING or IN PERSON within 15 days from the date of this letter:

- How you spend or will spend the award money

- How much more money you need and why

We want to make you aware that should you obtain estimates to support your appeal we are unable to reimburse you for that expense.

Your appeal will not be processed unless you provide specific information. We will evaluate what you send us and notify you in writing. Send your letter and copies of receipts to:

(Address)

ATTACHMENT Administrative Panel Grant Award Worksheet

Medical/Dental/Funeral/Transportation

INDIVIDUAL AND FAMILY GRANT PROGRAM

FOR ADMINISTRATIVE PANEL USE ONLY

___ Approved

___ Disapproved

___ Withdrawn

COMMENT:

ITEMS

<p>Award for Medical/Dental/Funeral/Transportation</p> <p>INDIVIDUAL AND FAMILY GRANT PROGRAM</p> <p>Date: _____</p> <p>DR#: _____</p> <p>APP#: _____</p> <p>Dear M(r/s)</p> <p>We have reviewed your Disaster Assistance Application form We have also reviewed the verification that you provided regarding your _____ expenses. We have determined that you are eligible for an Individual and Family grant (FG) award of \$ _____ and should be received within approximately _____ days from the date of this letter.</p>
--

You should spend the money for this disaster-related item.

Do not spend the money for any ineligible items. Items not eligible are:

Business-type losses;

Cosmetic repairs or improvements to your home;

Landscaping;

Recreational and luxury items such as swimming pools and stereos Bills you owed before the disaster.

Our program guidelines require that we review some grant awards. Please keep all original bills, receipts, estimates and cancelled checks of what you bought with IFG money for three years, in case we review your grant award. If your records are not, available, or if you spend the money incorrectly, we may require that you return the money.

We hope this money helps you recover from the disaster.

Sincerely,

GRANT COORDINATING OFFICER

ATTACHMENT

Medical/Dental/Funeral/Transportation Award Letter Attachment (optional)
IFG Case No.

SSN

FEMA

DR

STATE OF _____

INDIVIDUAL AND FAMILY GRANT PROGRAM

—

Applicant (Mr., Mrs., Ms.

(last name) (first name) (middle initial)

Address _____

—

Zip Code

GRANT ASSISTANCE HAVE BEEN AUTHORIZED FOR THE FOLLOWING NECESSARY EXPENSES AND SERIOUS NEEDS YOU MUST USE THE FUNDS FOR THESE PURPOSES ONLY.

Item/Service (Itemized List)

Total Grant Award

Denial Letter #1

INDIVIDUAL AND FAMILY GRANT PROGRAM
TERRITORY OF AMERICAN SAMOA

Date:

DR#

APP#

NAME

ADDRESS

CITY, STATE, ZIP

Dear

We have reviewed your Disaster Assistance Application form. We have also reviewed the inspection report of the damage to your home and/or personal property.

You are not eligible for assistance from the Individual and Family Grant (IFG) program because:

There was no significant damage to your property.

Your needs were met by insurance or other forms of disaster assistance. specifically,

You refused assistance offered by other programs, specifically,

You requested things that are not covered by the IFG program specifically,

The community in which you live is “sanctioned”.

If you told us about damages or needs for other items, such as medical, dental, funeral expenses, or transportation, you will receive another letter from us; it will tell you whether you will receive an IFG award for them.

You have __days from the date of this letter to appeal this decision. Your appeal must be written and sent to:

INDIVIDUAL AND FAMILY GRANT PROGRAM
TERRITORY OF AMERICAN SAMOA

(ADDRESS)

Sincerely,

Grant Coordinating Officer

ATTACHMENT

DENIAL LETTER #2

INDIVIDUAL AND FAMILY GRANT PROGRAM

Date: DR#:

APP#:

Dear

We have reviewed your Disaster Assistance Application. We have also reviewed the verification information that you provided regarding your _____ expenses. We have determined that you are not eligible for an Individual and Family Grant (IFG) award for these expenses, for the following reason:

If you are dissatisfied with this decision you have the right to appeal it. If you wish to appeal, you must request an appeal in writing or in person within days from the date of this letter to:

Individual and Family Grant Appeal Authority

(Address)

Sincerely,

Grant Coordinating Officer

ATTACHMENT

WITHDRAWAL OF APPLICATION LETTER

IFG Case No.

SSN

FEMA

DR.

Dear

Your application for grant assistance for disaster-related necessary expenses and serious needs as provided by the Individual and Family Grant Program has been received. It is recognized that you are voluntarily withdrawing your application for this grant.

If you should change your mind and wish your application be considered, you may call _____ at _____ prior to the ending date for application consideration, _____ (date)

If we may be of further assistance, please give us a call.

Sincerely,

Grant Coordinating Officer

ATTACHMENT

APPEAL DECISION LETTER (APPROVED)

IFG Case No.

SSN

FEMA

DR

Dear

I have made a careful review of your grant appeal, the decision made by the Territory of American Samoa Administrative Panel, and your application for assistance under the Individual and Family Grant Program. I have concluded that you are eligible for grant assistance as identified on the attached grant award. Flood insurance (is required: is not required). You may expect a check for the approved amount of \$ within a few days.

Sincerely,

Appeals Authority

Enclosure:

ATTACHMENT

Failure to comply with this request will necessitate possible legal action by the Attorney General’s Office.

Direct any questions to the _____, Grant Coordinating Officer, or you may telephone at _____.

Sincerely,

Grant Coordinating Officer

Enclosures: Agreement, Voucher, Itemized List, Pre-addressed envelope

ATTACHMENT

First Letter for Collection of Funds

IFG Case No.

SSN

FEMA

DR

Dear

I am writing you in regard to the grant of \$ _____ you received from the Individual and Family Grant Program. I regret to inform you that our records indicate you were eligible but received a duplication of _____ benefits from _____.

Federal Law requires that Individual and Family Grant funds cannot be provided to persons who are eligible and received financial assistance from any other source. Since financial assistance has become available to you, it is necessary that we seek a refund in the amount of \$ _____ for the duplicated items.

I am enclosing a copy of your agreement to refund grant monies to the Territory of American Samoa in the event future assistance become available. Also, I have enclosed a copy of our voucher indicating the amount paid in connection with your Individual and Family Grant application. Additionally, I am enclosing an itemized list of the benefits duplicated.

Please mail your remittance in the enclosed self-addressed envelope, payable in the amount of \$ _____ to the _____ and sent to Grant-Coordinating-

Officer, within _____ calendar days from the date appearing at the- top of this letter.

Second Letter for Collection of Funds

IFG Case No.

SSN

FEMA

DR

Dear

On _____ a letter was sent to you requesting that you return the amount of \$ _____ which was representative of a duplication of benefits with another program and the Individual and Family Grant you received. You were given _____ calendar days at that point to respond with the necessary amount. To date, we have not received payment. You will have _____ additional calendar days to respond with the amount of \$ _____. Failure to comply with this request will make it necessary to notify the Attorney General for possible legal action.

Please mail your remittance in the enclosed self-addressed envelope, payable to the _____ and send to _____, Grant Coordinating Officer, _____

If there are any questions, please feel free to call _____ and speak to the Grant Coordinating Officer.

Sincerely,

Grant Coordinating Officer

Enclosures: Agreement, Voucher, Pre-addressed envelope

*NOTE TO GRANT COORDINATING OFFICER: TO BE SENT BY

REGISTERED MAIL, RETURN RECEIPT REQUESTED.

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Block 8: Number of Grants Disbursed to Date. Enter the number of grants disbursed;

i.e., the number of grants that were awarded to date. Do not calculate the total number of checks disbursed since some individuals or families, while approved for one grant, may be issued more than one check.

Block 9: Dollar amount of Payments Disbursed to Date. Enter the total dollar amount of check disbursed to grant recipients.

Block 10: Number of Grant Appeals Received. Enter the cumulative number of appeals received.

Block 11: Number of Grant Appeals Granted in Full. Enter the number of appeals in which all appealed items were approved. If an application had been previously reported as disapproved, the “Number of Applications Disapproved to Date” (Block 5) must be decreased and the “Number of Applications Approved to Date” (Block 6) must be increased accordingly. If an application had been previously approved, no change will be made to the “Number of Applications Approved to Date” (Block 6), but the “Dollar Amount of Application Approved to Date” (Block 7) must be increased by the amount approved as a result of the newly granted appeal.

Block 12: Number of Grant Appeals Granted in Part. Enter the number of appeals in which some, but not all, of the appealed items were approved if an application had been previously reported as disapproved, the “Number of Applications Disapproved to Date” (Block 5) must be increased accordingly. If an application had been previously reported as approved, the “Dollar Amount of Applications Approved to Date” (Block 6) must be

increased by the amount approved as a result of the partially granted appeal.

Block 13: Number of Grant Appeals-Denied. Enter the number of appeals in which the original determination by the State has been upheld by the appeal authority.

NUMBER OF IFG CASES PENDING BY CATEGORY. Enter the number of cases

pending in each of the following eight categories, If there are no pending cases in one or more of the categories, leave the item blank; do not enter a zero. The sum of Blocks 14 through 21 will not equal the number pending, since an application may be pending for more than one reason. On the output document, the actual number of applications pending will be computed from Blocks 3 through 7, not Blocks 14 through 21.

Block 14: Site Verification.

Block 15: SBA Notification.

Block 16: Insurance Information.

Block 17: Temporary Housing Information.

Block 18: Voluntary Agency Information.

Block 19: Applicant Documentation.

Block 20: Floodplain Management Process.

Block 21: At Panel.

Block 22: Date of Aid-Program Review (Actual) (YY/MM/DD); Enter the date on which the Region performed the Mid-Program Review.

Block 23: Program Status. Enter an “F” if this is the final weekly report, meaning the State has reported disbursement of all approved cases and has completed all appeal processing. The report date of this record will become the closing date of the IFG program for program purposes. If this is not the final weekly report, leave this item blank.

Blocks 24 and 25: Deadline Extension - Funds Totally Disbursed (YY/MM/DD). In Block 24 enter the date which has been approved as the extended deadline for processing applications, disbursing grants, and resolving appeals. This date is changed in accordance with each extension approval. In Block 25

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enter the number of the deadline extension, i.e., if it is the first extension, enter “1”; if it is the second extension, enter “2”, etc.

Blocks 26 and 27: Deadline Extension - Final Voucher Due (YY/MM/DD). In Block 26 enter the date which has been approved as the extended deadline for completing all administrative activities. If an extension was entered in Block 24, enter a date which extends this deadline by the same number of days granted in Block 26. If only the Final Voucher Due date is being extended, enter it without regard to Block 24. This date is being changed in accordance with each extension approval. In Block 27 enter the number of the deadline extension as instructed for Block 25.

Blocks 28 and 29: Deadline Extension - State Share Repayment Due (YY/MM/DD). In Block 28 enter the date which has been approved as the extended deadline for the State’s repayment of the advance of funds for the State’s share of grants. In Block 29 enter the number of the deadline extension as instructed for Block 25. Usually, this deadline can only be extended once by the Regional Director.

Block 30: Comments. Enter comments relating to pending cases, program progress, funding requirements, and other appropriate information, indicate also if a Letter of Credit is in use. Date the comments.

December 9, 1985
FEMA Manual 8600.3,

Volume II

FIGURE Z

Instructions for the Final Statistical Report (G.6)

(FEMA Form 76-29)

Contract: The disaster declaration number: 3 digits for a major disaster (example: FEMA 667-DR, enter 667) and four digits for an emergency (example FEMA-3067 EM, enter 3067)

Report Date (YY/MM-/DD) Enter the date the State completed FEMA Form 76-31 or; if not available, the date the FSR was sent to the regional office if neither date is available, use the date the data is entered.

Block 1: Housing, through Block 22: Other. Enter the number of grants (and the dollar amounts) that included assistance in each category. The total number of grants, computed this way, will exceed the number of total grants reported. This is because a grant is awarded usually for more than one eligible category. For example: a \$5,000 grant can include assistance for repairing homes, clothing and transportation. This grant would be reported in the Final Statistical Report three times. However, the total dollars should always be the same.

Blocks 23 and 24: Maximum Grants. Enter the number and dollar values of grants issued with the maximum allowable benefits.

Block 25: Date Final Voucher Received in Regional Office. Enter the date the State’s final voucher was received, not the date of the State’s letter transmitting it. Entry into this block “closes” an IFG-program from the grant award point of view.

YY/MM/DD

Block 26: State Estimate of Total Administrative Expense. Enter the dollar amount of administrative expense included in the State’s final voucher. If a figure on actual expenses is unavailable, enter the current estimate. Do not report the amount reimbursable to the State.

Block 27: Will a Final Evaluation of this Program be conducted? Enter yes or no.

Block 28: Comments. If comments are entered, they should be dated.

Full Format (FEMA Form 76-31)

The State uses the full format to report to the Regional Director. In turn, FEMA translates certain of this information onto the entry document (FEMA Form 76-29) for input into the IFG system. The full format information is historical, and can be used for program analysis later; it should be retained in the official IFG files in the regional office.

State of . Self-explanatory.

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FEMA-____-DR. Enter the disaster declaration number: 3 digits for a major disaster (example:

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FEMA-667-DR, enter 667) or four digits for an emergency (example: FEMA-3067-

EM, enter 3067)

Date Declared: Enter the date the President signed the disaster declaration, as noted in the Federal Register notice.

Type Disaster: Enter the kind of storm or event that caused the disaster, from the Federal Register notice. This should be exactly the same as is entered in other FEMA reports, such as in the “Totals” File. It is especially important that “flooding” be entered if the disaster declaration includes it, because of FEMA’s flood insurance requirements.

Item 1. Approval of Individual and Family Grant Program.

- a. State Administrative Plan submitted by the state on YY/MM/DD. Enter the date the State requested the Regional Director to approve the plan for the current disaster.
- b. Plan approved by Regional Director, FEMA on YY/MM/DD. Enter the date the -Regional Director wrote to the State approving the plan for this disaster. This is the same date as is entered in Block 7 of the Initial Report (G.5; FEMA Form 76-27).

Item 2: Cost of Individual and Family Grant Program.

- a. Original estimated cost of grants (Federal and State). Enter the same figure submitted by the State as the basis for entry into the Initial Report, Block 9, Total Estimated Program Cost.
- b. Actual cost or grants (Federal and State). Enter the total amount of grant awards. Enter the entire cost of the program, excluding administrative costs. This should be equal to the last weekly report entry (FEMA Form 76-28) in Block 24, \$ Amount of Payments Disbursed to Date.
- c. Current State estimate of total administrative expenses. If the actual administrative expenses are not available, the best estimate available should be used, not the amount that is reimbursable. This is the same as Block 34 of FEMA Form 7629, the Weekly Report.

Item 3. Applications.

a. Expected (Original estimate). Enter the original estimate as it was entered in Block 8 of the Initial Report, FEMA Form 76-27.

b. Actual

- (1) Approved. Enter the total number of applicants approved for grant assistance by the State. This includes applications in which some items were approved and some disapproved. Don’t forget those approved on appeal (in full or in part). This figure should be the same as the final weekly report entry in Block 21 of FEMA Form 76-28.

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- (2) Disapproved. Enter the final number of applicants who do not meet the eligibility criteria for the IFG program. These are applicants whose applications have been processed to the point of an eligibility determination, not those who were withdrawn. This figure should be the same as the final weekly report entry in Block 20 of FEMA Form 76-28.
- (3) Withdrawn. Enter the final number of applicants whose application will not be processed fully because: (a) they have requested their application to be withdrawn; (b) they: failed to provide the necessary information; (c) they are administratively removed from the program by the States. This figure should be the same as the final weekly report entry in Block 26 of FEMA Form 76-28.

Item 4. Appeals Received.

- a. Granted in Full. Enter the final number of appeals in which all appealed itc.lns were approved. If an application had been previously counted as disapproved, the “Number Disapproved” must be reduced and the “Number Approved” must be increased accordingly. If the application had previously been approved, no change will be made to the “Number Approved,” but the “Dollar Amount Approved” must be increased by the amount approved as a result of the appeal. This figure should be the same as the

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final weekly report entry in Block 26 of FEMA Form 76-28.

- b. Granted in Part. Enter the final number of appeals in which some, but not all, of the appealed items were approved, if an application has previously been counted as disapproved, the “Number Disapproved” must be reduced and the “Number Approved” must be increased by the amount approved as a result of the appeal. This figure should be the same as the final weekly report entry in Block 27 of FEMA Form 76-28.
- c. Denied. Enter the final number of appeals in which the original determination, by the State was upheld by the appeal authority. No change in numbers or dollars is necessary, since this is “status go.” This figure should be the same as the final weekly report entry in Block 28 of FEMA Form 76-28.

Item 5. Disbursement.

- a. Number of Grants. Enter the total number of applicants who received grant assistance. Count families, not checks.
- b. Total Grant Payments. Enter the total dollar amount for all grants made: Federal and State shares, not administrative expenses.
- c. Average Grant. Enter the result of the total grant payments divided by the number of grants.
- d. Maximum Grants. Enter the number of grant applicants who received \$5,000, and the total dollar amount.

FEMA Manual 8600.3, Volume II December 9, 1985

- e. Grant Categories. See the Instructions for Blocks 1 through 22 of FEMA Form 76-29, Final Statistical Report (entry document portion of this figure). This portion of the report is entered into the IFG system.

Item 6. Comments. Self-explanatory.

Name and Title of Preparer. The person in the State who prepares the report, his title and agency name.

Date. The date the report is prepared. This date will be the same as the Report Date on FEMA Form 76-29 (Final Statistical Report Entry Document).

Information Management System (IMS) Reports - Individual and Family Grant Program

REPORT TITLE DISTRIBUTION
PURPOSE/USES RECIPIENTS REQUENCY

DOB Master Listing Alphabetical listing of all IAO, IAO, TH, IFG, DA, Daily, close of business TH, IFG, DA, IA applicants SBA, ARC, Hotline, while DFO is in full who filed a registration. Tracks IMS. Operation. After phase assistance from ARC, TH, SBA, IFG down once a week or until and type of insurance. Used by all applicants are assisted.

ALL programs to track delivery and progress of assistance including the dollar values of grants, loans, MR, ER assistance.

The log requires the use of an alpha/numeric code listing to decipher various program activity and reason codes. Main purpose of the log is to allow all agencies/programs to track their respective caseloads and to help prevent duplication of assistance between the various programs and insurance proceeds. Also, determines caseload for Red Cross additional assistance.

Red Cross Listing Alphabetical listing of all IA DA, IFG, SBA, ARC, IMS

Daily, close of applicants who received assistance business or as from ARC; lists dollar value of requested.

assistance by category (repairs, furniture, medical, funeral, and other). Used by DA reviewers when processing 90.56 to avoid duplication with TH and IFG.

It is also used by IFG and SBA to avoid duplication.

IFG Transmittal Used as a cover sheet/ IFG, IMS Whenever IFG transmittal document to caseload is ready forward pending IFG for delivery to applications packages IFG.

to the State for processing.

IFG Cumulative Listing To provide IFG with an

As requested IFG, IMS alpha listing of all IFG applicants.

IFG Status Report Statistical report of all IFG FCO, IMS, SCO, IFG

Daily or when applications received by IAO requested. status

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1978

- ANNEX K-

MEDICAL SERVICES DISASTER PLAN

DISASTER ASSISTANCE PLANNING & COORDINATION OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

TERRITORY OF AMERICAN SAMOA

MEDICAL SERVICES DISASTER PLAN

I. INTRODUCTION

The following plan is a comprehensive strategy which describes the responsibility of the Department of Medical Services and its relationship to the Disaster Assistance Plan for American Samoa, and the Pago Pago International Airport Emergency Procedure Plan. In addition, this Plan describes the intradepartmental resources and procedures of casualties at the LBJ Tropical Medical Center in the event of a disaster striking American Samoa. Normal emergency procedures will be described in the State Plan for Emergency Medical Services.

II. THE ALERT PROCEDURES

In the event of an impending or existing disaster, the Emergency Operations Center at the Department of Public Safety, or the Emergency Control Center at the Air-port, or other individuals or agencies notifying the Department of Medical Services of such emergency should follow the priority notification list below:

First: Emergency Room (Telephone 633-5555)

Second: Director of Medical Services (Telephone 633-5743)

Third: Chief of Staff (Telephone 633-5214 -Ext. 48)

A. Relationship with the Disaster Assistance Plan for American Samoa:

In the event of an impending disaster, or the occurrence of a disaster, the Director of

Medical Services, or his representative, will be so notified by the Disaster Emergency Operations Center located in the Department of Public Safety. At the time of notification, the decision will be made by the Director, or his representative, as to which parts of the Department of Medical Services Disaster Plan shall be implemented in response to the types and numbers of casualties expected.

An Emergency Mobile Medical Team has been established. This Mobile Team will be dispatched by the Director, or in his absence, by the Emergency Room physician, to the scene of the disaster, as needed. In general and wide spread disasters such as hurricane, earthquakes, and tidal waves, the Mobile Team would not likely be effective, and could better be utilized at the hospital to treat emergencies arriving at that facility.

B. Relationship with the Pago Pago International Airport Emergency Plan

An Emergency Mobile Medical Team has been developed consisting of the medical personnel, equipment, supplies and drugs, and vehicles necessary for on-the-site primary medical care in the event of an airplane crash.

The components of this team are:

Personnel:

1 physician (nights - physician-on-call) (days - Chief of Emergency Room)

2 nurses (days - RN -Nursing In-Service Director) - LPN - Emergency Room)

1 ambulance driver

1 attendant (janitor or security guard)

In the event that either the RN or LPN designated above cannot be immediately located upon an ALERT III, any other RN or LPN shall be detailed by

the Emergency Room physician to accompany the ambulance.

If the physician on duty at night is in the process of delivering a baby, he shall leave the procedure to the attending nurse. If he is in the process of treating an existing emergency case, he shall make sure that the patient is stable and dispatch a nurse to summon one of the physicians P16m the physicians from the quarters directly behind the hospital to cover for him, before leaving.

Vehicle:

1 ambulance (should always be available at LBJ)
Equipment: emergency ambulance supply pack

1 emergency medical kit

The Emergency Supply Kit is to be stored in the Ambulance and the Medical Kit will be contained in a satchel which will be locked in the Narcotics cupboard in the Emergency Room for ready access in time of need. These two kits will be checked by the Director of Nursing Service each time they are used and any items used will be replaced at once. Drugs will be checked by the Director of Nursing Services on the first of each month to make sure they are not out-dated.

In addition to these supplies, a permanent store of Emergency Supplies will be kept in the allotted space at the Airport Fire Crash Station for use only in case of Airline Disaster. The key will be kept in the Emergency Medical Kit.

ALERT I:

In the event of an Alert I, as designated by the Airport Emergency Plan, the Emergency Control Officer at the Airport will notify the Emergency Room at the hospital and the Director of Medical Services. Upon notification, the Director of Medical Services, or his representative, shall notify the Mobile Medical Team, which will pick up the Emergency Medical Kit and the Emergency Supply Kit and standby near the Ambulance.

ALERT II:

In the event that an Alert II is received from the Emergency Control Officer, the Emergency Mobile Team at the hospital will be dispatched to the Airport

Fire Crash Station; pick up the Emergency Medical Supply Kit stored there, and stand by for further instructions.

ALERT III:

In the event that an Alert III is received, the mobile Emergency Team shall proceed immediately to the Fire Crash Station and on to the crash scene, depending on the position of the ambulance at that time. Immediately upon receiving an Alert III, the person responsible for the Emergency Room will activate the Hospital Disaster Plan.

The Director of Medical Services shall accompany the ambulance to the crash scene, or if he has missed the ambulance, proceed to the scene as soon as possible by other transportation.

At the crash scene the Emergency Mobile Medical Team will examine all crash victims as they are located and determine medical status of each individual. The dead will be transferred to a temporary morgue at the Airport Fire Crash Station. Passengers still alive will be given necessary on-the-spot treatment and transfer-red to the hospital as soon as medically advisable. Private vehicles may be pressed into service for transporting victims to the hospital and will be accompanied by an attendant with medical training whenever possible. Drivers will be urged to drive safely.

The Director of Medical Services shall assess the situation at the scene and notify the hospital of the need for additional medical personnel, supplies, or ambulance support as deemed necessary to meet the emergency.

III. THE HOSPITAL MOBILIZATION PROCEDURE

Upon receipt of a Disaster Alert I and II, the Director of Medical Services, or his representative will determine the nature and probable medical impact of the disaster and will estimate the number and types of casualties expected at the medical center. If a Disaster Alert III occurs during hospital daylight working hours the Director or his representative shall activate the Hospital Disaster Plan and notify the key personnel on-duty by internal telephone or hand-carried messages. Any key members off-duty at the

time shall also be notified by telephone, radio or hand-carried messages, as required.

In the event that the Alert III occurs during a night shift at the hospital, the following procedures will be carried out:

The Director or other persons receiving an Alert III through the proper channels, shall activate the Hospital Disaster Plan and enlist the necessary help in contacting key members of the team by telephone using the Emergency Notification List and/or dispatching department personnel and volunteers with private vehicles to contact those individuals who do not have telephone. Concurrently, the Director shall contact the radio station and dictate an appropriate recall message.

Upon arrival at the hospital, the key members of the Disaster Response Team will report to the Admission Desk for assignment. Key personnel will notify the necessary personnel under direction and will briefly outline to those personnel what is expected and give any pertinent instructions. At this time the Director will also decide whether or not to order evacuation and/or patient transfer procedures.

IV. HOSPITAL ACTION PLAN

Within the hospital the flow of casualties will occur generally as outlined on the schematic flow chart on the following page, by functional categories:

- A. Security and Traffic Control
- B. Receiving and Sorting
- C. First Aid and Emergency
- D. Definitive Treatment
- E. Hospital Support Services
- F. Coordination and Communications
- G. In-patient transfer or discharge

A. Security and Traffic Control:

Upon notification by the Director of Medical Services (or his representative), the following security measures will be initiated immediately.

1. The Nursing Supervisor shall Jock all doors indicated by an (L) on the Security Action Chart

(Tab K-I). The movable wooden benches at the Pharmacy will be moved by the passage way security personnel to the “Fale” and placed so as to leave only room for the passage of a gurney on one side. One security guard will be stationed here to restrict entrance to the outpatient area.

2. Where medically possible most patients and family members in the Pediatric, EENT, Medical and OPD Clinics at the time will be escorted out of the area through the main entrance by the personnel on duty at each respective clinic, and asked to return at a later time.
3. All hospital personnel not actually involved in the operation will be kept out of the out-patient area. Those personnel on duty elsewhere in the hospital will remain at their regular duty stations unless assigned to help in some other area by the Nurse Supervisor, Director of Nursing Services, or Hospital Administrator. Off duty personnel not assigned to the operation will stand by at the main lobby near the telephone switchboard.
4. Security personnel will be stationed, by the Hospital Administrator (or his representative) at points indicated by a circle (SG) on the Security Action Chart and will perform the following functions:

a) Security Personnel - Emergency Entrance and Parking Lot.

Clear the area outside, the emergency entrance of parked vehicles, and direct arriving vehicles with casualties to the correct entrance.

Assure that vehicle once unloaded leave the area immediately.

Keep the public from interfering with unloading and vehicle movement.

Allow only patients and medical personnel into hospital through the emergency entrance.

b) Security Personnel - Passage Way.

Allow only hospital personnel into out-patient area.

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Allow only hospital personnel into the Medical, Surgical, Pediatric Wards and Inner Core, including X-ray.

A roster of security guards and janitors will be kept respectively by the Hospital Administrator and the Chief of Housekeeping from which the personnel to be assigned to security functions will be designated. If necessary, assistance will be requested from the Police Department for additional security personnel.

B. Receiving and Sorting:

Location:

Patients will arrive at the Emergency Entrance and be taken immediately to the Pharmacy Waiting Area for Triage.

Function:

Each patient received will be either left on a gurney, or laid on a blanket placed on the floor during the triage process.

Triage and immediate life saving procedures only; i.e., I.V., fluids, resuscitation, morphine; will be started here, as warranted by the conditions in the emergency treatment area.

Arrivals requiring more extensive emergency treatment (deep lacerations, immobilization of fractures, hemorrhage, moderate to severe burns) will be sent to the Emergency OPD and Casualty Room.

Arrivals in critical condition requiring continuation of extensive life support and monitoring services will be sent directly to the I.C.U.

Arrivals requiring further diagnostic services or suspected internal injuries or requiring observation may also be sent directly to X-ray and/or the Surgical Ward.

In general the triage team, being aware of the resources and intended function of the various treatment components will use their own best judgment of where and when to dispatch the casualties to ensure the earliest possible movement out of the receiving area in the best medical interest of the patient.

The triage team will also indicate which patients will receive priority treatment.

The triage team will determine the need for a blood sample for cross matching purposes. This will be carried out by the laboratory personnel in the Out-patient Laboratory.

Medical Records Personnel stationed at the Admissions Desk will supply disaster tags to the triage team and will assist in transcribing the necessary information on the tags and attaching it to the patients.

The dead-on-arrivals will be transferred to the morgue.

Personnel:

Triage Team:

Chief of Internal Medicine

Medical Officer

2 nurses selected by Director of Nursing Services, or her representative.

2 strong janitors selected by the Hospital Administrator to move patients.

Other Personnel:

2 medical records personnel stationed at the Admission Desk.

2 strong janitors (for lifting, of patients) to be stationed at the emergency entrance.

Pharmacist and assistant stationed in the Pharmacy.

2 lab personnel, and blood bank technician stationed at the Stat Lab.

2 messengers stationed at the Admitting Desk (must be bilingual). To be assigned by the Hospital Administrator.

Hospital Administrator to be stationed at the Admitting Desk, and circulating.

Equipment:

The following equipment will be stored near the Emergency Room and its location well known, and transported to the Emergency Room as required.

3-IV Stands

6-Gurneys

20-Blankets

Emergency Crash Cart

3 Portable Oxygen Units

2 Ambulance Bags

1 Portable Suction Unit

C. First Aid and Emergency Treatment: Location:

First Aid will be rendered in the Pediatric Clinic

More extensive emergency treatment will be rendered in the Emergency Treatment Room and Casualty Room.

Function:

The function of the first aid treatment will be to take care of those minor conditions which can be handled in the out-patient area and discharged to home.

The functions of the more extensive emergency treatment will be to treat those conditions which the triage team feels can be treated on an out-patient basis. Some of these may be discharged after treatment and others may require hospitalization for observation, Further treatment or further diagnostic testing. Patients to be transferred to other parts of the hospital will be sent ambulatory, or by gurney down the back passageway.

Personnel:

First-Aid

- Dayshift: Regular Pediatric Clinic personnel will remain.
- Nightshift: 3 LPNs and 2 nurses aides assigned by the Nurse Supervisor or Hospital Administrator.

Emergency Room

- Dayshift: 1 surgeon plus the normal OPD staff. Additional staff, or replacement staff may be assigned by the Director

- Nightshift: 1 surgeon, two Medical Officers, 3 nurses, 1 nurse aide messenger.

The Medical Officers will be assigned by the Director of Medical Services, or Chief of Medical Staff; the nurses will be assigned by the Director of Nursing Services, or the night Nurse Supervisor.

Equipment:

Normal equipment of the two clinics will be utilized.

Any additional equipment or drugs will be obtained by messenger from the appropriate sources. (Central Supply, Medical Supply, Pharmacy, etc.). 1).
Definitive Treatment Location:

Surgical Ward or ICU, as indicated.

Personnel:

Regular personnel on duty to be supplemented by additional personnel as required.

Nurses and physicians designated for I.C.U. duty will report there.

Personnel with diagnostic function will report to their sections and prepare equipment etc., for immediate use, (X-ray, lab, blood bank, etc.).

Function:

Casualties will be identified and the treatment indicated on the disaster tags will be started immediately.

Diagnostic procedures requested will be initiated as necessary with the support of X-ray and laboratory.

All surgery, in so far as possible, will be scheduled to be done in the operating suite after proper preparation of the patient.

Surgery will be performed on a priority basis. All previously scheduled elective surgery

Will be rescheduled for a later date.

All deliveries will be performed in the delivery suite.

E. Hospital Support Services:

1. X-rays:
 - a. Chief X-ray Technician and necessary staff will prepare for rapid x-ray examination of large number of casualties.

- b. Radiologist will be available to read x-ray.
- 2. Out-patient Laboratory:
 - a. Chief Laboratory Technologist will prepare lab for immediate and rapid procedures.
 - b. Lab will be responsible for morgue.
 - c. Blood bank to perform collection, storage, matching and, as necessary, contact of potential blood donors.
- 3. Medical Records:
 - a. Medical records staff will work in the Records Office and the receiving and sorting area.
 - b. The Medical Records librarian will notify the personnel to be assigned to the various duties associated with the disaster plan.
 - c. The Medical Record librarian will direct the efforts of the record room personnel in connection with the preparation, safeguarding, distribution and maintenance of all records.

She will also direct all necessary procedures for admission and discharge of patients. Disaster tags will be used to identify casualties by name, age, sex and address and time of patients arrival to the hospital. Initial impressions as to injury will be made by Physician and/or MO.

As soon as feasible, original medical records of known patients will be drawn from the medical records to provide a continuing basis of medical recordskeeping on each casualty.

If no original records are on file, new records will be instituted in the same manner as day-to-day admissions.

- 4. Maintenance:
 - a. The Director of Plan Operations will assure that the necessary personnel are available to maintain the uninterrupted operations of the hospital utilities.

- 5. Medical Supply:
 - a. Assure that adequate staff are present to replenish medical and surgical supplies on immediate call.
 - b. Maintain adequate records of issuance of all supplies.
 - c. All delivery of emergency supplies to be received, at Medical Supply - Medical Supply Officer to take charge and to distribute all supplies.

NOTE: IF DISASTER OCCURS DURING THE NIGHT HOURS THE FOLLOWING SERVICES WILL BE ACTIVATED ONLY IF THE DIRECTOR DECIDES THERE IS SUFFICIENT REASON.

- 6. Dental Services:
 - a. The Director of the Dental Clinic will await instruction and assignment at the Dental Clinic.
- 7. Dietary Services:
 - a. Under direction of Dietitian, all personnel to report to kitchen for instruction.
- 8. Laundry Service:
 - a. Manager will call necessary personnel and be prepared to process linen and deliver as necessary.
- 9. Volunteer Service:
 - a. Report to Director of Nursing Services Office for instruction and assignment.
- F. Coordination and Communications:
 - 1. Administrative and Business Office. Function to assume charge of coordinating disaster plan and supervise all communication, traffic, control, press and public information.
 - 2. Provision for relatives and friends of casualties. The Director of Medical Services, or in his absence, the Hospital Administrator will coordinate the entire Disaster Plan Operations.

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3. The Hospital Administrator will assume responsibility for coordinating material, communications, and public information.
4. The following will be made available through the Administrator's Office:
 - a. Casualty lists, as available:
 - b. List of casualty admissions to in-patient areas. (No next of kin or friends may visit unless requested and/or instructed to do so).
 - c. List of casualty discharges. (Patients to be discharged will leave by the main lobby door where they may be met by friends and relatives).

Under no circumstances will unauthorized photographs or interviews be permitted in the hospital.

Information releases to the public or press shall be only through the Director of Medical Services Office.

5. Communication will be carried out between the Director's Office, the various treatment areas, and support services sections by telephone and messenger. Two messengers will be assigned by the Administrator to the receiving and sorting area; two to the Director's Office and one to the Emergency Treatment Area.

G. In-patient Transfer or Discharge:

The Surgical Ward will be used first to accommodate casualties to be admitted. The following

- a. Patients awaiting elective surgery
- b. Convalescent patients able to be discharged early
- c. Patients about to be discharged

V. IMPLEMENTATION AND MAINTENANCE OF READINESS

A. Personnel Involvement:

procedures will apply.

1. Restrict non-casualty admission to critically ill patients, full-term pregnancies and other non-casualty patients of an emergency nature.
2. Reassignment, within the hospital of non-disaster patients will be by one of the Surgeons, or in their absence, by the Hospital Administrator. Medi
 - a. Surgical in-patients to be transferred to Medical Ward as necessary.
3. Discharge surgical patients, as required and medically prudent.

The key personnel of each section of the hospital will be responsible for explaining the disaster procedure to those individuals in their respective sections. When necessary, these key personnel will keep a list of individuals in their sections who would be called in case of a disaster. The Disaster Planning Committee will meet with the key personnel to explain in detail the Disaster Plan and the role of each individual in its implementation. These people will then take action on their own part to assure the readiness of their respective sections.

It must be remembered that unneeded persons milling around in the emergency area can delay or obstruct effective treatment. The most capable and dependable personnel should be chosen for critical job assignments since the highest possible performance is needed in such emergencies.

The list of key hospital personnel to be call in case of disaster will be developed and maintained by the Medical Services Administrator.

The list will contain the following information:

1. Person's name
2. Telephone number (or near by neighbor's number)
3. Village
4. Indication of private vehicle availability

This list will be reviewed monthly and updated as necessary by the Hospital Administrator, and copies will be distributed to the following persons.

Medical Services Administrator

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Hospital Administrator	6 ABD's
Switchboard Operator	6 Curlex
Chairman of Disaster Planning Committee	6 4x4s
Director of Medical Services	6 2 x 2s
Director of Nursing Service	4 Triangular Bandages
Other Appropriate Individuals	I.V. FLUIDS

A copy of the most recent list shall be displayed in the wall at the switchboard.

B. Equipment Readiness:

Reference to the storage, accessibility and completeness of the necessary emergency equipment is contained in the body of the plan. The location and availability of such equipment will be ascertained during each disaster exercise.

C. Practice Drill:

All key personnel will walk through the hospital into the actual spaces where the emergency procedures will take place and observe the size and configuration of the area in relationship to the functions expected to be carried out there. These people will note any physical reasons why the function intended for that area can not be carried out effectively and efficiently. These discrepancies will be reported to the Disaster Planning Committee and the plan will be revised accordingly. At periodic intervals (not less than twice a year). Disaster Drills will be conducted which will, as closely as possible, simulate actual disaster of varying magnitudes. The key personnel involved will respond as an actual emergency was taking place.

If necessary the Disaster Plan will be reviewed at least annually and revised and if necessary, to reflect any changes staffing patterns, functions, or physical layout of the hospital.

AIRPORT EMERGENCY STORES

- 10 Blankets 6 Stretchers
- 6 Splints (assorted)
- 1 Pressure light

BANDAGES

- 12 Ace-4"

- 6 D 5% in Ringers
- 6 Giving Sets
- AMBULANCE EMERGENCY PACKAGE**
- Intravenous Fluid
- 1 D5W 500 cc
- 1 Lactated Ringers 500cc
- 1 Normal Saline 500cc
- IV. Infusion sets 2
- Tourniquets
- Alcohol Sponges
- Butterfly Needles
- #19 G-3
- #21 G-1
- #25 F-1
- #23 F-1
- Scalp Vein Needles 2
- Medicut #18 G-3
- Tape
- Blood Pressure Cuff
- Stethoscope
- Laryngoscope Handle with 3 blades
- Endotracheal tubes 4 (various sizes)
- Airways 4
- Knife Blade and Handle
- Bandage Scissors

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Dressing Set	Morphine gr. tubex 10
ACE Bandages 6	Metrozok 0.1 gm amp. 4
Kerlix 4	Solu Corteg 250 mgm vial 2
4x4 4 packages	Lidocaine 2% 50cc vial 1
Eye pads	Soda Bicarbonate 50cc amp 4
Tongue Blades-4	Narcan amp. 2
Applicators 4	Valium 10 mgm amp. 6
SterileGloves 2	Spirits of Ammonia
Stomach Tubes #4F & #18F	

TERRITORY OF AMERICAN SAMOA
DISASTER ASSISTANCE PLAN

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-ANNEX L –

AIRPORT EMERGENCY PROCEDURES PLAN
ASSISTANCE PLANNING & COORDINATION
OFFICE

DEPARTMENT OF PUBLIC SAFETY
GOVERNMENT OF AMERICAN SAMOA

Suction Catheters 3	
Triangular Bandages 6	
Safety Pins 24	
ABD Pads 6	
Splints 2	
Burn Packs	
Portable Suction Machine	
EMERGENCY MEDICAL KIT	
Adrenalin 1:1000 10 amp	Syringes
Aminophyllin 250 mgm amp. 2	3cc 6
Aramine 1cc amp. 2	5cc 4
Atropine 20cc vial 1	
Benadryl -20cc- vial 1	
Alcohol sponges	
Calcium Chloride 1 gm amp. 1	
Cedilanid 0.4 mgm amp. 4	
Coramine 1.5cc amp. 4	
Compazine	
Demerol 50mgm tubex 5	
Nitroglycerine tablets	
Mantin Sodium 250 mgm amp. 3	1 bottle
Isuprel 1:5000 amp. 4	

- b. Notifying appropriate agencies listed in assigned emergency notification directory.
- c. Discharging other communication responsibilities as assigned by proper authorities and relay appropriate information to the Emergency Control Officer.

Airport Fire Chief.

- a. Will be in complete charge of standby operation for in-flight emergencies and commands all fire fighting and rescue activities on the airfield.
- b. Providing aircraft fire/crash/rescue emergency operations to include fire equipment, rescue first aid and evacuation support, structural fire fighting protection for all Airport facilities including on scene

command of all participating units and related evacuation and rescue operations.

5. Airport General Maintenance Supervisor. The General Maintenance Foreman is responsible for:

- a. Responding with personnel and equipment required to establish a safety barrier around the area of the emergency as necessary.
- b. As quickly as possible, repairing or making operable airport operated facilities, equipment, buildings and utilities directly related to the resolution of the emergency and the safe operation of the airport.
- c. Maintaining a supply of items and materials including portable emergency generators required for prompt repair of facilities equipment, buildings and utilities.
- d. Providing manpower and equipment to assist in casualty evacuation operations, elimination of hazards and barricading of unsafe areas and decontamination.
- e. Discharging other responsibilities as outlined in other sections of the plan or as directed by proper authority.

6. Medical Officer, Director, Department of Health or his designated assistant has the responsibility for:

- a. Providing emergency medical support.
- b. Coordinating all support medical facilities effectively for mass casualty care.
- c. Coordinating on-scene evacuation efforts.
- d. Activate Department of Health's emergency control actions in relationship with this plan as outlined in Department of Health Disaster Plan.

7. Territory Police Department. Pursuant to the Department of Public Safety's Coordinator with this plan, the Commissioner of Public Safety serves as a Security Officer to direct and control all aircraft emergency security operations and is responsible for the following:

Providing all necessary support and services to the Airport Security Police Unit during emergencies to include:

- a. Establish vehicular traffic control points, crowd control necessary to public safety, evacuation and emergency control actions.
- b. Providing emergency on-scene security as requested by the Chief of Airport Security Police and/or Emergency Control Officer.
- c. Back up support to Airport Security Police in taking law enforcement actions against perpetrators, if any, involved in Airport emergencies subject to agreement and procedures with Federal law enforcement agencies.
- d. Providing required representation in the Airport Emergency Command Post and/or on-scene Command Post, when activated by alert category to assure centralized control and coordination of all Territorial Police and Airport Security Police emergency control actions on the Airport.

8. Engineering Officer. Proceed immediately to provide assistance as required by the Emergency Control Officer and has the responsibility for the following:

- a. Providing personnel and equipment to assist Airport Maintenance Crew to quickly control the emergency as it relates to facilities, equipment, buildings and utilities.
- b. Providing manpower and equipment to assist in casualty evacuation operations, elimination of hazards, auxiliary lighting, barricading of unsafe areas and decontamination.

9. Commissioner of Public Safety. In the event of an impending or existing disaster affecting Pago Pago International Airport may activate and be responsible for maintaining the Emergency Operations Center in the Department of Public Safety.

If the situation warrants, under his direction, have emergency staff coordinate activities

- related to medical support in accordance with existing arrangements and agreements.
10. Harbor Patrol. Pursuant to the Pago Pago International Airport Letter of Agreement, the Harbor Patrol Commander in Pago Pago has the responsibility under the alert category for:
 - a. Directing, supporting in coordination with Port Administration, Water Transportation Division for rescue and evacuation operations associated with aircraft crashes in the waters adjacent to Pago Pago International Airport.
 - b. Providing air search/rescue and evacuation support for Pago Pago International Airport emergencies.
 11. Personnel Officer. The Airport 1st Senior Supervisor serves as the Personnel Officer, during emergencies occurring at Pago Pago International Airport and has the responsibility for:
 - a. Promptly notifying the General Maintenance Foreman as appropriate, of noted emergencies situation in the main terminal or any other airport facilities or buildings.
 - b. Ordering additional airport personnel to duty as necessary and reassign maintenance crew, janitorial personnel in providing emergency assistance control actions involving the terminal buildings or at the emergency site.
 12. Airport Public Relation Officer. Subject to established policies, and 2nd Senior Airport Supervisor serves as the Public Relations Officer and has the responsibility for the following:
 - a. Responding to all mutual aid calls and other emergencies as notified, to handle news media.
 - b. Administering news media inquiries by disseminating and releasing the facts concerning the incident and referring news media to the airlines, tenant or owner involved for additional details.
 - c. Establishing with each airline and/or tenant, a place where the news/media personnel can gather to obtain information directly from the airline or tenant involved.
 - d. Arranging transportation for news media personnel to the scene after permission has been given by the Airport Manager.
 - e. Assuming control and responsibility over the news media personnel to insure they do not interfere with emergency control operations;
 13. CAP/IS (FAA). Subject to its established policies, the FAA activities supporting Pago Pago International Airport have the responsibility for the following:
 - a. Promptly notifying the Airport Communication Center (Fire Crash Dispatcher) of aircraft emergencies, crash situations, description, identification, nature of cargo aboard, quantity of fuel remaining, number of persons on board and of other observed or reported impending in progress emergencies involving Pago Pago International Airport per established agreement.
 - b. Notifying other FAA Agencies and the National Transportation Safety Board, as appropriate, of emergencies involving Pago Pago International Airport per internal FAA instructions.
 - c. Issuing radio instructions or advisories to aircraft or vehicles on runways and taxiways so as to assure the safety of aircraft operations and to minimize interference between emergency control operations and aircraft movements.
 - d. Relaying radio transmission received on FAA frequencies related to emergency situations to the Airport Communications Center or on-scene Command Post as appropriate.
 - e. Advising all inbound and outbound air traffic of emergency situations affecting their operations on the Airport.

- f. Responding rapidly with personnel and equipment to control emergencies involving FAA facilities.
- g. Repairing as rapidly as possible those damaged FAA facilities critical to the effective and safe operation of the Airport.
- h. Making the decision on shutting down and evacuating FAA operated facilities during emergency situations.
- i. Notifying APC-700, Air Transportation Security Division, FAA, Honolulu, Hawaii upon request from Airport Manager's Office on any Bomb Threat, Hi-jacking Incident, or any other Federal Crime concerning Aviation Security committed in Pago International Airport.

13-B. APC-700, Air Transportation Security Division, FAA, Honolulu. Notify the Offices of FBI, Honolulu, telephone-No. 521-1411 and 6th US Army EOD Unit, Fort Shafter, Honolulu, telephone No. 438-2315.

- 14. Federal Bureau of Investigation (FBI). Assuming primary law enforcement jurisdiction of hijacking, bomb threats, sabotage, and all other Federal Crimes concerning Aviation Security occurred in Pago Pago International Airport.
- 15. Scheduled Air-carriers, Supporting Ground Services, MAC Representative, Air Taxi Services, Pago Pago International Airport.

Each of the above type organizations using Pago ago International Airport has a responsibility for:

- a. Providing the Airport Junior Manager with appropriate information for the Emergency Notification Directory.
- b. Notifying appropriate authorities (AIRPORT MANAGEMENT) or Federal agencies of emergencies or crashes involving its aircraft or facilities.
- c. Taking initial emergency control actions or emergencies involving its facilities.

- d. Providing technical assistance for controlling ground emergencies involving its aircraft or the aircraft it supports.
- e. Providing for on-scene evacuation of uninjured passengers involved in ground emergencies of its aircraft or the aircraft it supports under direction of Airport authority.
- f. Controlling its personnel to prevent nonessential from proceeding to the emergency scene.
- g. Providing prompt removal of its disabled or crashed aircraft from runways/taxiways as soon as released by proper authority.
- h. Providing personnel and equipment to support emergency control operations as available and as requested by Airport authority.
- i. Providing for the search of its aircraft and cargo, passenger and facilities involved in bomb threats.
- j. Accomplishing other responsibilities as maybe outlined in other sections of this plan.

C. AIRCRAFT EMERGENCY OR CRASH AIRCRAFT EMERGENCY -

ALERT I

Condition. An aircraft initial report encountering minor difficulties: e.g., a shutdown engine or a feathered propeller on a multi-engine aircraft, oil leak, low or no hydraulic pressure, etc. When aircraft reports condition worsening, emergency call shall immediately be changed to Alert II. Alert I notification warrants responding agencies to be on standby condition which may escalate.

ACTION CAPIS (FAA)

- 1. Relay to Airport Fire Chief Dispatcher of the description, identification, nature and location of potential emergency, number of persons on board, etc.

Fire Crash Dispatcher.

- 1. Notify Airport Manager.

2. Notify Airport Fire Chief.
3. Notify local aircraft operator or his representative if appropriate.

Airport Manager.

1. Notify Director of Health, Commissioner of Public Safety, Port Director, and Air/Sea & Rescue (harbor Patrol).
2. Standby in emergency readiness prepared to move in if alert category changes to Alert II or Alert III, or a resultant accident or crash is observed; in which cases the alert change is automatic. Specify route for land emergency equipment to follow.
3. Assume normal conditions when advised by CAPIS that Alert I is terminated.

Director of Health Department. Prepare to proceed to emergency location if the alert category is changed to Alert II or Alert III.

Commissioner of Public Safety. Prepare to proceed to emergency location if the alert category is changed to Alert II or Alert III.

Air/Sea Search and Rescue (Local Harbor Patrol). Take appropriate steps and prepare to proceed to standby position off runway if the alert changes to II or III.

Airport Fire Chief.

1. Prepare to move out with emergency equipment. When a resultant accident or crash is observed, the change in alert is automatic.
2. Resume normal operations when advised by the Airport Manager, Alert I is over.

AIRCRAFT EMERGENCY - ALERT II

Condition. An aircraft approaching to land is in major difficulty; e.g., engine on fire, faulty landing gear, no hydraulic pressure, etc. Prepositioning of emergency equipment near runway is mandatory.

CAPIS.

1. Relay to Fire Crash Dispatcher on Radio Frequency 121.7 identification, nature and location of potential emergency.

Fire Crash Dispatcher.

1. Notify Security “0” Dispatcher and Airport Fire Chief, of the description/identification, nature and location of potential emergency, if explosive cargo is aboard, etc.
2. Notify other fire stations if the seriousness of the alert justifies such actions.
3. Monitor CAPIS communications and relay appropriate information to Airport Manager and Fire Crash Chief.

Security “0” Dispatcher.

1. Notify Airport Manager and Commissioner of Public Safety.
2. Notify Director of Health Department.
3. Notify local aircraft operator concerned.
4. Notify Air/Sea Search and Rescue (local Harbor Patrol).
5. Notify Director of Public Works.
6. Monitor emergency communications system and relay appropriate information to Airport Manager.

Airport Manager.

1. Notify Governor, Lieutenant Governor, Port Director. Recall Assistant Airport Manager and shift supervisors.
2. Proceed without delay to standby position.
3. Notify standby crew when Alert II is terminated.

Airport Fire Chief.

1. Proceed without delay to standby position. Emergency equipment will not cross or enter runway until traffic information has been received from CAPIS. Should the aircraft crash on the Airport, procedures outlined for Alert III emergency will be implemented immediately.
2. Should the aircraft make a normal landing, crash and fire fighting equipment will remain in standby positions until the Airport Manager either directs that equipment to follow the

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aircraft or informs the Fire Crash Chief that the emergency is over.

Director of Health Department.

1. Proceed to pre-determined standby position (Fire Station).
2. If a resulting accident occurs, accompany the fire fighting equipment to scene of accident if known and commence rescue evacuating and/or treatment whichever is necessary.
3. Leave emergency area if no resulting injury or accident is noted.

Air/Sea Search and Rescue (Harbor Patrol).

Proceed immediately to standby position off head of runway. In the event of aircraft crashing in the water to engage in immediate rescue operations. If a normal landing is made, return and resume normal operations.

Commissioner of Public Safety.

1. Proceed to the pre-determined standby positions.
2. Post additional guards to control routes of ingress to the airport movement area or to the standby position.
3. Stop, divert, or otherwise control unauthorized vehicles and spectators so that they will not interfere with emergency operations or air traffic control function.
4. Depart from the Airport movement area when his services are no longer required, and/or when released by the Airport Manager.

Director of Public Works.

1. Proceed immediately to provide assistance as requested by the Airport Manager.

AIRCRAFT EMERGENCY - ALERT III

Condition. An aircraft has crashed on or near the Airport, parked aircraft are endangered by fire or explosion, or aircraft are involved in a collision.

CAPIS.

1. Relay appropriate information to Fire Crash Dispatcher - Rescue "0".

2. Notify other persons or agencies as required in FAA Handbook #80204 - Aircraft Accident Procedures.

Fire Crash Dispatcher - Rescue "0".

1. Notify Security "0" and Airport Fire Chief. Clear all necessary emergency equipment to the scene of the emergency or crash.
2. Monitor CAPIS and Rescue Equipment Communication and relay appropriate information to Airport Manager and Fire Crash Chief.

Security "0".

1. Notify Airport Manager and Commissioner of Public Safety.
2. Notify Director of Health and U.S. Coast Guard.
3. Notify aircraft operator or his representative. If aircraft is owned by military, notify local MAC Representative who will take steps to dispatch Military Control team to the scene.

Airport Manager.

1. Close the Airport or runway to aircraft traffic as appropriate and necessary.
2. Notify Governor, Lieutenant-Governors, Director of Port Administration, and Director of Public Works.
3. Designate Control Point where investigative authorities report, relatives and news media can obtain names of casualties or fatalities and other information, etc. The Control Point will normally be the Airport Manager's Office.
4. Supervise and control all activities at the Airport Crash/Emergency site until relieved of certain authority invested in others by Federal or local news. If the Airport Manager may assist until a recognized official arrives and assumes command of the situation.
5. When emergency is under control, designate officer to stand by until the responsibility for preserving the wreckage is assured by the aircraft operator, or other legal authority.

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6. Authorize, supervise, or direct the removal of wreckage from the Airport, when released by Federal or local officials and insurance officials so as to reopen the Airport or runway at the earliest practical time.
7. Notify Fire Crash Dispatcher and other necessary aviation officials when the runway and/or Airport is reopened for use and resume limited or normal traffic when conditions so warrant.

Airport Fire Chief.

1. Proceed without delay to scene of crash/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.

NOTES:

- a. If the aircraft involved has a weapon aboard and the aircraft is on fire but the weapon is not on fire, keep the weapon cool.
- b. If the weapon is burning or is engulfed in flames, do not attempt to fight the fire. Move back approximately 500 feet from the crash. Do not attempt to clean up the area. Fragments of high explosives may detonate if not handled properly. Cleanup of military aircraft accidents will be accompanied by military teams.

Director of Health Department.

1. Proceed to scene of crash emergency. Obtain traffic information from CAPIS prior to entering Air Operations Area.
2. Direct the movement of casualties to a safe distance away from aircraft.
3. Record names of casualties as they assemble or are assembled at point of safety.
4. Make cursory check of accident situation, determine approximate number of casualties that will need hospital care or examination. Notify hospital to prepare for the approximate number of patients you intend to send and provide

general information as to type and seriousness of injuries.

5. Direct ambulance attendants as to which patients they are to remove to the hospital.

Direct the person recording the names to add to the list the names, addresses, and information for all other persons in the aircraft or injured in the accident. The information should include where the walk-away persons are going, etc.

6. Direct persons to search crash area and approach thereto for location of additional casualties. Provide same service as in 2, 3, 4 and 5 above.

7. As soon as firemen are able to remove, or assist in removal of additional casualties, provide the same service as in 2, 3, 4, and 5 above.

8. Remove those accident/disaster victims, who cannot benefit by first aid or hospital treatment and cannot be immediately transported to receiving facilities, to the Airport holding station or to a temporary morgue.

- 8a. In the case of an emergency where there are passengers obviously in a state of shock, but otherwise uninjured, these persons shall be transported to the Fire Crash Facilities without delay. Upon their arrival at the facility, they shall be isolated from newsmen and unauthorized personnel. Admission to this isolated area shall be strictly controlled by the Public Relation Officer: Any survivors with minor injuries should receive medical attention at this time. The air carrier Company involved shall be notified immediately by the Airport Manager, so adequate arrangements can be made to transport the survivors and their personal belongings to their desired destination as rapidly as possible. While awaiting these arrangements, every effort shall be made to keep the survivors warm and comfortable. Telephone facilities shall be provided for the survivors during this waiting period.

9. Observe all, or as many as possible, of the accident victims and record any unusual or suspicious indications of possible cause or contribution cause of the accident/crash.

Commissioner of Public Safety.

1. Take appropriate action to assist movement of emergency vehicles to crash/emergency site. Enlist the services of local and Reserve police forces to accomplish this.
2. Secure the crash site from spectators and any other persons not providing emergency-rescue service. Persons not providing emergency-rescue service shall be referred to Airport Manager or Control Point. Securing the crash site may require enlisting the services of local, Reserve, or Military Police forces. It may also require the installation of temporary fencing, floodlighting, etc.
3. Notify the U.S. Post Office, if U.S. mail involved.
4. Release responsibility for guarding the crash/emergency site to the Military NTSB, aircraft owner or operator, or airline company when the person assuming the responsibility is property identified.

Air/Sea Search and Rescue (U.S. harbor Patrol).

1. Proceed to scene or crash emergency, if crash emergency is in the water.
2. Notify Water Transportation Division, if additional personnel or equipment is needed.
3. Direct and supervise rescue operations and removal of casualties or accident victims from crash/emergency site, and transportation to nearest landing for pick up by ambulance and transportation to hospital.
4. Conduct search of crash/emergency area for locating additional casualties.
5. Notify hospital of need for ambulance, giving point of landing and approximate number of persons being brought in.

Military. Military authority will have complete custody of military aircraft involved in an accident as soon as they arrive at the scene.

U.S. Post Office. A U.S. Post Office representative will assume custody of all U.S. Mail as soon as its removal is authorized' by NSTB.

Press, Radio and TV.

1. Press representatives may be admitted to the scene of a civil aircraft accident at the discretion of the Airport Manager. In the case of Military Aircraft accident, they shall not be permitted to the scene but should be referred to the Military authorities.
2. Photographs of civil aircraft may be permitted by the Airport Manager with the restriction that none of the wreckage of bodies shall be altered or otherwise disturbed for this purpose.

Action Taken By Others.

1. The operator (person who causes or authorizes the operation of an aircraft, such as the owner, lessee or bailee of an aircraft) of a aircraft is responsible for preserving to the extent possible any aircraft wreckage, cargo and mail aboard the aircraft, and all records involved in an aircraft.
2. Prior to the time the NTSB, or its authorized representative, takes custody of aircraft wreckage, mail, or cargo, such may be disturbed or moved only to the extent necessary to:
 - a. Remove persons injured or trapped.
 - b. Protect the wreckage from further damage.
 - c. Protect the public from injury.
3. Where it is necessary to disturb or move aircraft wreckage, mail, or cargo, sketches, descriptive notes, and photographs shall be made if possible, of the accident locale including original position and condition of wreckage and any significant impact marks.

NTSB (NATIONAL TRANSPORTATION SAFETY BOARD).

1. Only authorized representatives of NTSB shall be permitted access to civil aircraft wreckage, records, mail or cargo.
2. An authorized representative of NTSB, shall release custody of a civil aircraft wreckage, records, mail, and cargo when it is determined that the NTSB has no further need for such.

D. AIRPORT STRUCTURAL FIRES

Condition. A fire involving a building or buildings on the Airport, including those in which aircraft are housed.

Initial Alarm. Anyone observing an Airport structural fire should promptly notify the Airport Fire Chief, either by radio, telephone, or in person.

Fire Crash Dispatcher.

1. Immediately dispatch fire/crash equipment to the scene of the fire and crash.
2. Notify Airport Manager 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 of nearby buildings that may be endangered.

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 will retain custody. Radiological assistance can be obtained by calling the nearest U.S. Atomic Energy Commission office (refer to page 26-168 for further data as to where to call).

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 firemen and crash crew are wearing protective clothing and (if available) self-contained breathing apparatus.
3. Rescue of persons in the aircraft should not be delayed because of possible presence of radioactivity; it will not change the rescue operations ordinarily used for crash in which radioactivity is not present.

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.

E. NATURAL DISASTERS - STORMS

Condition. Hurricane or other storms involving winds of high velocity for which there is advance warning.

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.
6. Maintain contact with Emergency Operations Center in the Department of Public Safety.

Airport Fire Chief.

1. 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.

Assistant Airport Manager.

1. Barricade or board up windows and doors where possible.
2. Check and adjust guys and braces on power pole or antenna masts.
3. Place mobile maintenance equipment in sheltered area.
4. Check standby generators to insure that they will start and they have an adequate fuel supply.

Airport Fire Chief.

1. Give procedures to aircraft operations -. until such time as air operations are no longer practicable due to the storm.
2. Be prepared to fight structural fires. The possibility of fire may be high, due to broken powerlines.

F. RADIOLOGICAL INCIDENTS

Condition. Two situations are covered by this section: The accidental spillage of radioactive materials in commercial shipment, and accidents involving aircraft carrying nuclear weapons.

CAPIS

1. Notify Fire Crash Station Dispatcher giving adequate information for further relays to appropriate personnel.
2. As directed by the Airport Manager, CAPIS will advise aircraft not to land, take-off, or taxing through the contaminated area. This is to avoid spreading the contamination.

Fire Crash Dispatcher.

1. Notify Airport Fire Chief and Airport Manager of any inflight radiation 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 ACCIDENTS COMMERCIAL SHIPMENTS

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 winds or a thermal column from an aircraft fire are present, the radioactive material could become airborne and be carried some distance.

Commissioner of Public Safety.

1. Keep unauthorized persons 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 riot 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 will retain custody. Radiological assistance can be obtained by calling the nearest U.S. Atomic Energy Commission Office.

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 firemen and crash crew are wearing protective clothing and selfcontained breathing apparatus.
3. Rescue of persons in the aircraft should not be delayed because the 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 degrees 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; larger 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 well trained firefighter should be familiar. The following, therefore, will deal primarily with the radiological aspects of the problems. The aircraft commander will so notify the Fire Crash Dispatcher if the aircraft has a nuclear cargo aboard.

Fire Crash 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 (meaning 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.

Airport Manager. If an aircraft accident crash occurs, notify U.S. Atomic Energy Commission and ask for radiological assistance. Calls may also be made to ADC/DOD Joint Nuclear Accident Coordination Center, Albuquerque, New Mexico (Telephone: Area Code 505-264-4677). Notify security officer (Military or local).

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 ABC 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 operations, 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.

Airport Fire Chief.

If an aircraft accident, or possibility of such is involved, comply with appropriate procedures for ALERT 1, 2, and 3, as appropriate in Section II of this Plan.

Commissioner of Public Safety. Do not attempt to clean up the site of a radiation accident. This can be dangerous. The special ABC 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.

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1988

ANNEX M —

WARNING

TERRITORIAL EMERGENCY MANAGEMENT OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

WARNING

I. PURPOSE

This Annex describes and deals with systems to disseminate appropriate government officials and the general public timely forecast of all hazards requiring emergency preparedness of response action.

II. GENERAL

In a slow build-up disaster or emergency situation (Hurricane or- Tsunami), the SCO or Territorial Emergency Management Office (TEMCO) will normally receive initial notification from the Weather Bureau (NOAA) at Tafuna. Upon evaluation and determination that an emergency is imminent, the

SCO or TEMCO will initiate the Alert Notification List. In those situations of obvious fast build-up disaster situation (earthquake) the SCO or TEMCO will initiate warning to the general public by activating the EMERGENCY BROADCAST SYSTEM (EBS) immediately in contacting the WVUV Radio Samoa for the dissemination of information.

Public Warning will also be by sirens in the Bay area and Tafuna area for any potential disaster. Police cars will be dispatched to announce the warning to the Village Pulenu'u. Radio and Television will be utilized continually during the emergency build-up period. Advisories and instructions will be issued through the disaster period as long as radio and/or television is available.

Backup system for EBS to Radio capability is essential to warn the general public would be the portable generator that produce sufficient power to disseminate information.

III. ATTACK WARNING SIGNAL

The "Attack Warning" signal is also by "Sirens" in both areas, the Bay and Tafuna, in which the tone of each siren lasts for three minutes steady and repeated as necessary. This signifies that an enemy attack has been detected, or is imminent. Thereafter, follow instruction provided by the EBS.

PROPOSAL PLAN FOR MANU'A ISLANDS

"WARNING SYSTEM"

In order to alert the Manu'a Islands, the National Weather Service Station (NOAA) in Tafuna will provide the Commissioner of Public Safety/TEMCO with available information as to the nature, imminence and potential severity of the anticipated danger.

Since the National Weather Bureau equipped the Island of Ofu (an island of the Manu'a Group) with a Handar Equipment they would receive adequate information that may warrant a warning from TEMCO. This equipment was installed to furnish better data for the Weather Bureau.

Warning information is transmitted by activating the EBS (Radio Samoa - "WVUV" Radio). Warning of imminent emergency conditions provides the Manu'a

Islands with precious minutes, --even hours-- to evacuate when necessary to higher grounds in case of tsunami, to board up windows, protected with storm shutters, secured furnitures/properties and make emergency preparations in case of hurricane, and in case of an earthquake, keep calm and don't run or panic but listen to the Radio for further information.

The Territory Emergency Management Coordination Office (TEMCO) staff are aware of the possible occurrence of an emergency or major disaster and their responsibilities in the execution of the Warning System Plan for the Manu'a Islands. The proper execution of this plan will reduce or prevent the loss of lives and damage to property.

The Commissioner of Public Safety as the Emergency Management Coordinator (EMC) will coordinate all activities relative to the execution of this Plan. He will activate the Emergency Operations Center (EOC). He will insure rapid dissemination of warning information and keep the Governor advised at all times.

EXECUTION OF WARNING SYSTEM PLAN

Warning:

In a slow build-up disaster or emergency situation (hurricane or tsunami), the Commissioner of Public Safety/TEMCO will normally receive initial notification from the National Weather Service.

Upon evaluation and determination that an emergency is imminent, the Commissioner of Public Safety/TEMCO will initiate the Alert Notification, in those situations of obvious fast build-up disaster situation (earthquake) the Weather Bureau initiate the Alert Notification directly to the Radio Station (WVUV). Radio and Television will be utilized continuously during the emergency build-up period. Advisories and instructions will be issued through the disaster period as long as radio and television is available.

Other means of alerting the Manu'a Islands is through Communication with the Police Station in each island, where Police cars dispatched to advise each Village Pulenu'u (Mayors). Each Police Station is equipped with radio linked with Central Police Station in Tutuila the Main Island in American Samoa.

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1988

-ANNEX N -

EMERGENCY PUBLIC INFORMATION

TERRITORIAL EMERGENCY MANAGEMENT

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

ANNEX N

EMERGENCY PUBLIC INFORMATION (EPI)

N. I PURPOSE

This annex establishes policies and procedures and assigns responsibilities to ensure the maintenance of a capability to disseminate accurate and timely information on potential and actual large-scale emergencies to the people of American Samoa.

N. II SITUATION AND ASSUMPTIONS

A. Situation

1. American Samoa have continuing programs which use various frequencies of communication, including the mass media, to provide needed and desired information about the government activities and services to the general public.
2. During periods of emergency, the public needs, and generally desires detailed information regarding protective action to be taken for minimizing loss of life and property. There are times, however, when disaster strikes without warning and the public information system cannot react rapidly enough to properly inform the public about the hazard. For this reason it is important that prior to the occurrence of an emergency the public be made aware of potential hazards and the protective measures that can be employed.

3. In major emergency situations, there may be numbers of media representatives seeking information about the situation and about response action. It is a policy of the American Samoa Government Emergency Management Coordinator (EMC) to cooperate fully with the media to provide complete and accurate information, and to create an atmosphere conducive to useful and constructive participation by the media in all phases of emergency management. American Samoa Government Officials under the Coordinating Office are developing procedures in cooperation with local news media to disseminate emergency information to the public. However, they recognize that a really large emergency will attract regional and national media representatives not parties to, or knowledgeable of, local media arrangements.

B. Assumptions

1. During emergency situations, the general public will demand information about the emergency situation and instructions on proper survival/response actions.
2. The media will demand information about emergency situation. The local media, particular broadcast (Radio Samoa “WVUV” & Samoa Technologies “KSBS”) will perform an essential role in providing emergency instructions and up-to-date information to the public. Depending on the severity of the emergency, or the media’s conception of the severity of the emergency, regional and national media will also cover the story and demand information and comments from government officials.
3. Depending on the severity of the emergency, telephone communication may be sporadic or impossible. The local radio/television stations without, emergency power may also be off the air.

N. III CONCEPT OF OPERATIONS

A. Phases of Emergency Management

1. Mitigation. The public information program relating to hazard mitigation is critically important and a challenge. American Samoa

Pulenu'us (Village Mayors) will carry on a continuing effort to provide each village with appropriate information on preventing measures in compliance with local statute. Hazard Mitigation public information is not regarded as "emergency public information". It can and should be approached as a topic of major importance to be covered in the regular public information programs using the best available tools and techniques of public and media relations. An example of this type of activity is the ongoing effort to inform the public and to encourage public participation on any emergency management program, also encourage to carry home insurance of public dwellings.

2. Preparedness. Emergency Public Information (EPI) preparedness includes development and maintenance of plans; procedures checklists, notification lists, and standby public information materials. In an increased readiness situation, preparedness activities are accelerated; and there may be a need to respond to many inquiries from the media and the public.
3. Response. The Territory Emergency Management Coordinating Office (TEMCO) staff will be directly involved in the warning process. In large scale disasters or disaster threats, the designated agency TEMCO under the Department of Public Safety will disseminate emergency instructions, and information to the public in the following order of priority:
 - a) Lifesaving/health preservation instructions given by the Emergency Medical Technicians (EMT)
 - b) Emergency status information
 - c). Other useful information originated by the government or in response to media inquiries.
4. Recovery. During this phase, attention will be focused on restoring channels of communication with the public. Appropriate information will continue to be released, particularly on the restoration of essential services, travel restrictions, and assistance programs available. When time

allows, actions taken during the emergency will be assessed; and the plan and check list will be revised as necessary.

B. Direction and Control.

The Public Information staff are integral parts of the Direction and Control organizations within the Disaster Coordinating Committee. The Director of Public

Information reports directly to the Commissioner of Public Safety, the Emergency Management Coordinator for American Samoa. The information will be disseminated from the EOC as the Coordinating Committees (Department Directors designated) will be located which makes decisions in deployment of an On-scene Public Safety Officers in Coordination with other levels of government and private organizations.

C. Coordination of Public Information

It is essential that the Emergency Coordinating Committee (similar, as the EPI organization and activity) be recognized as a disaster focal point of contact. In American Samoa the government is responsible and public information will be disseminated from the EOC where the Emergency Coordinating Committee directs and controls all disaster operations.

1. In an emergency with the Territory impact, there may be a Territory Emergency Public Information Center, and the Governor's Press Secretary may be a releasing point to the media, in coordination with the single news point. The Press or the Protocol Officer, representing the Governor may release information to the public.
2. The Emergency Management Coordinator (EMC) which is the Commissioner of Public Safety or TEMCO will summarize the disaster situation and report same to agency response activities. The State Coordinating Officer (SCO) which is also the Commissioner of Public Safety with the assistance from TEMCO coordinates with the Federal Emergency Management Agency (FEMA) Region IX and provide staff support to the people of American Samoa.

3. The FEMA PIO at the FEMA regional office or at the disaster scene will provide information on Federal response efforts and Federal Assistance programs and will coordinate with American Samoa SCO. If practicable, Federal information coordinating functions should be integrated into the Territory news releasing point, which is the office of the Governor (Protocol Officer).

N. IV ORGANIZATION AND ASSIGNMENT OF RESPONSIBILITIES

A. Organization

The Emergency Public Information (EPI) organization is also the Emergency Coordinating Committee involving all Department Directors under the supervision of the Commissioner of

Public Safety. Operational relationships for this group are, therefore, analogous to those for Direction and Control. For any disaster situations, the Emergency Coordinating Committee is set up with an organization as shown below:

B. Assignment of Responsibilities

1. All American Samoa Government Departments
 - a. When the Emergency Coordinating Committee is activated, it provides information throughout the Territory and issue all emergency information to the news media and the public through the EBS system to assure proper coordination.
 - b. Develop and maintain hazard-specific EPI materials.
 - c. The Emergency Coordinating Committee as the Emergency Public Information (EPI) does develop a capability to rapidly release emergency instructions and information to the public through all available means.
 - d. Receive calls from the media and the public concerning and emergency situation and respond with official information or relay calls to the BOC staff members, as appropriate.
 - e. Obtain reports or situation summaries from any EOC Committee Members of all

emergency organization elements to maintain current situation.

- f. EOC staff to prepare news release as appropriate.
- g. Conduct situation briefings for visitors, media, etc. as appropriate.
- h. Deploy on-scene Public Safety Officers, as appropriate. Arrange interviews with key personnel when requested by media and when possible without interfering with response operations.

N. V ADMINISTRATION AND LOGISTICS

- A. As an integral part of the Direction and Control Organization, the Emergency Coordinating Committee assigned in the American Samoa BOC: and its needs for communications, supplies, and equipment are covered in the EOCSOP.
- B. If practical in a given emergency situation, public information personnel (TEMCO staff) will continue to work in the office. This space is located in the American Samoa EOC.

N. VI PLAN DEVELOPMENT AND MAINTENANCE

This annex is maintained by the Territory-Emergency Management Coordination Office (TEMCO).

N. VII DEFINITION OF TERMS

EBS - Emergency Broadcast System

EOC - Emergency Operations Center

SOP - Standard Operating Procedure

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1988

—ANNEX O—

HUMAN SERVICES

TERRITORIAL EMERGENCY MANAGEMENT
OFFICE
DEPARTMENT OF PUBLIC SAFETY
GOVERNMENT OF AMERICAN SAMOA

TERRITORY OF AMERICAN SAMOA
DISASTER ASSISTANCE PLAN
1988

ANNEX O

HUMAN SERVICES

O. 1. PURPOSE

This annex covers the delivery of services as counseling under disaster conditions. It may also provide for housing, food, and clothing in situations not of a sufficient scope to justify activation of mass-care systems.

II. GENERAL

Following a major disaster declaration by the Governor under the provisions of the Territorial Disaster Plan and by the President under the provisions of P.L. 93-288, Federal and State Disaster Assistance programs are made available to victims suffering losses and damages in designated areas.

III. EXECUTION

- A. The State Coordinating Officer (SCO) will refer counseling services under the disaster conditions to the Office of Human Resources. This agency is also responsible for the implementation of the Individual Family Grant Program (IFGP) in accordance with P.L. 93-288 and FEMA Regulation A4CFR 205 in which the counseling services is being implemented.
- B. The Department of Education primarily take necessary action to insure safety of students and teachers, and coordinate with the American Red Cross to:
- a) Provide mass shelter in available school facilities when required.
 - b) Provide emergency feeding in schools when necessary.
- C. The Office of Procurement provide available materials for clothing when necessary.

— ANNEX —“P”

FIRE AND RESCUE

TERRITORIAL EMERGENCY MANAGEMENT
OFFICE

DEPARTMENT OF PUBLIC SAFETY
GOVERNMENT OF PUBLIC SAFETY

FIRE PROTECTION

INTRODUCTION

The most important responsibility of the Department of Public Safety is to protect life and property. The best method to make buildings safe for occupants and keep the property losses at a minimum is to conduct inspections frequently. By doing this, we identify the hazards and make recommendations to correct them.

OPERATION & TECHNIQUES

In case of a major fire call, all the fire units will be dispatched to the scene. Upon arrival the Fire Commander should evaluate the situation and immediately take proper action. He directs every actions that are to be taken in putting out the fire, must see to the equipment that are required. He must also assess the condition of the building, request medical assistance if required, and must attend to overseeing the whole operation.

INVESTIGATION

The Fire Commander will appoint a ranking officer to conduct the investigation to the cause of the fire and damages.

RESCUE

INTRODUCTION

Within American Samoa and the Manu’a Islands we could encounter various rescue problems. Some of these could be vertical rescue from two-story buildings or water rescue from below, grade or

otherwise inaccessible area, etc. With these in mind, we need to develop expertise to use in rescue where we are unable to use conventional techniques.

OPERATIONS & TECHNIQUES

On rescue missions, fire units and crews will dispatch. Upon arrival the Fire Commander will evaluate the situation, request for additional assistance or specialized equipment. He must also direct the operation until completed.

REPORT

It is the responsibility of the On-Duty Watch Commander to record the operation and details and submit a full report to the Fire Commander for approval.

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1988

- ANNEX- “Q”

LAW ENFORCEMENT OPERATION PROCEDURE

TERRITORIAL EMERGENCY MANAGEMENT OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

LAW ENFORCEMENT OPERATION PROCEDURES

TRAFFIC OPERATION

Officers shall do their utmost to reduce traffic accidents. They shall be constantly on the alert to prevent violations and when a violation occurs, they shall take proper police action. Furthermore, when operating a vehicle they shall endeavor to set a good example to their own careful driving.

Stopping Vehicle. An officer stopping a vehicle for a traffic violation will do so as quickly and safely as possible, making every attempt to stop the vehicle out of the flow of traffic.

- a. All information on the complaint will be printed. All sections of the violator’s information will be filled, if possible.
- b. The officer will check the appropriate boxes indicated the conditions existing. If the violation is involving a accident, he will check the appropriate boxes and draw a circle around the section.
- c. The officer will sign his full signature, badge number and unit number.
- d. The officer will indicate the assigned court time and date, leaving at least ten (10) days between the violation date and the court date.
- e. The officer will note a short description of the violation on the back of the court (pink) copy of the complaint. This is to refresh his memory and also for information to the court.

Release or Arrest of Person Cited. Most traffic offenders are released on their recognizance to report to court at the time set in the summons.

However, an officer may arrest an offender without a warrant when certain major traffic offenses have been committed and the officer has reasonable cause to believe the person arrested committed the offense(s). The grounds for arrest without warrant are set out in this Manual under Arrests, Section.

- a. **Person Causing Accident.** When a police officer at the scene of a traffic accident has reasonable ground to believe that a driver of a vehicle involved in the accident has, in connection with the accidents, committed a traffic offense, the police officer may issue to the driver a citation for the offense without Frlaking an arrest.
- b. **Accident Investigation.**
 1. Get to the scene as soon as possible with safety.
 2. Park properly at the accident scene.
 3. Care for injured and protect their property.
 - a. The first duty at the scene is to care for and give first aid to the injured.
 - b. Personal property of the injured will be safeguarded by the officer.

4. Safeguard the scene from further accidents.
 - a. Clear the scene as soon as possible.
 - b. If vehicles are not movable, call the proper towing agency.
 - c. Use proper safeguards at the scene (direction of traffic, flares, etc.)
 5. Determine if hit and run.
 6. Locate and interrogate witnesses.
 7. Note the physical conditions at the scene.
 8. Take tape measurements and have photographs taken if needed.
 9. Inspect and test vehicles involved.
 10. Clear the scene of all debris, glass, anything that would be hazardous. To do so, he will contact the proper agency to have it done.
 11. Follow-up on personal injuries.
 12. A report must be prepared by using the Motor Vehicle Accident Report form. A continuation report form is provided for statements of drivers and other witnesses involving the officers' opinion as to cause of the accident.
- c. Hit and Run. The following procedures will be used in hit and run investigation.
1. Determine if the accident is a hit and run before broadcasting the information.
 2. Obtain a detailed description of the vehicle and driver involved.
 - a. Obtain vehicle license number, year, make, model, color and any unusual distinguishing marks on the vehicle, including damage locations.
 - b. Attempt to get as complete a description of the driver and all passengers as possible.
 3. Broadcast available information if practical.
 4. Follow through and attempt to locate and effect the arrest.

Driving While Under the Influence. Vehicles being operated improperly or under circumstances which lead the officer to believe the driver may be under the influence of intoxicating liquor or drugs may be stopped by officers. The driver suspect is first given field sobriety tests. If such tests indicate the driver may be intoxicated qualified officers may administer other tests such as breath analysis. A person who refuses such tests may have his driver's license suspended or revoked as provided by law.

Operating Emergency Vehicles. An officer may operate, a properly equipped emergency vehicle 10 miles over the legal speed limit when responding to an emergency.

INVESTIGATION OF CRIMINAL ACTIVITY

This section is designed to assist the officer generally with respect to the investigation of matters within the jurisdiction of the department.

Preliminary Investigation.

- a. Normally, an officer will be assigned to investigate by the watch commander. In other cases the officer may personally witness criminal activity or receive information about criminal activity from a private party. Before investigating further, the officer should notify the watch commander.
- b. Although it is difficult to describe the exact limits of the preliminary investigation because of the infinite variety of incidents which confront the police, generally it will include the immediate investigation of a criminal act from shortly after the occurrence to that point where postponement of further investigative effort or transfer of the responsibility will not jeopardize the successful completion of the investigation. Some of the activities that should be undertaken by an officer arriving on the scene include:
 1. Note time detailed and time arrival on scene.
 2. Obtain status of case and notify dispatch sergeant.
 3. Care for injured.

4. Preserve scene including all physical evidence, taking precautions to guard against damage or destruction of same. Locate and question witnesses.
5. in case a pick-up is to be issued for any person(s), obtain best available description and immediately call station before proceeding with other details.

Handling of Physical Evidence. One of the most important aspects of criminal investigation is the proper handling of all evidence relating to the case. Such evidence will not be admissible in court unless the prosecutor can establish that the evidence being presented in court is the same as the originally acquired by the officer. To do this the prosecutor must be able to show the court the “chain of custody” of the evidence. Records must identify in order every person who handled the evidence and every place the evidence was kept. Obviously, the fewer people and places involved, the easier it is to accomplish this task.

The responsibility of an officer is to immediately secure the scene of the crime so that evidence cannot be tampered with and to take custody of all evidence as soon as possible.

- a. Record the evidence with as much detail as possible; for example, if a firearm, the officer should note the kind of weapon and any identifying marks such as a serial number.
- b. Insure the unauthorized persons do not tamper with the evidence.
- c. As soon as possible, turn the evidence over to the responsible officer. This would be the detective in the event such officer arrives at the scene of the investigation. Otherwise, the officer shall retain possession of such evidence and turn the evidence over to the evidence custodian at the earliest opportunity.
- d. Record the date and time of taking possession of the evidence and the date, time and identity of the person to whom the evidence is given upon surrendering possession of the evidence.

Reports. One of the most important aspects of criminal investigation is the conclusion of the

investigation by writing a complete and accurate report. Careful notes should be taken at all times and interim reports completed as required.

ARRESTS

An arrest is the taking of a person into custody so that the person can be held to answer for a crime which that person is in the process of committing or has committed. An arrest is accomplished by detaining or physically restraining another person for purposes of taking that person into custody.

Who Can Make An Arrest. An arrest is usually made by an officer on duty. An off-duty officer should make an arrest in any situation where the officer should arrest while on duty if the situation is of an emergency nature and the arrest cannot await the arrival of on-duty officers. Such situation might be where a crime is committed in the presence of the off-duty officer or there is a threat to life and property.

A private person is authorized to make an arrest without a warrant to prevent the commission of a felony or when a felony is committed in that person’s presence.

When An Arrest Can Be Made.

- a. Reason for Arrest. The law authorizes an officer to make an arrest only when the officer has a warrant or, under special circumstances, without a warrant.
- b. Arrest With a Warrant. A warrant is an order from the High Court of American Samoa directing an officer to make an arrest of a particular person. The Attorney General office applies to the court for a warrant, usually upon information supplied by the Department. If a warrant has been issued and the officer does not have it in possession at the time of the arrest, it should be shown to the person arrested before being booked if such person requests to see the warrant. Once executed, the warrant should be signed by the person arrested and the warrant immediately returned to the court.
- c. Arrest Without a Warrant. Only in the following cases may an officer arrest a person without a warrant for that person’s arrest.

AMERICAN SAMOA ADMINISTRATIVE CODE – 2023 EDITION

1. When a felony is committed in the officer's presence.
2. To prevent the commission of a felony.
3. Of persons found near the scene, of a felony and suspected of committing it, where such suspicion is based on reasonable grounds are those which would lead a reasonable prudent person to believe that the person to be arrested is the one who committed the crime. Mere suspicion, rumor or information without supporting facts are not sufficient.
4. When a misdemeanor is committed in the presence of an officer.
5. To prevent a breach of the peace when the officer has reasonable grounds to believe that a breach of the peace is about to be committed.
6. Of persons who obstruct justice by assaulting the officer or otherwise interfering with the officer while he is discharging his duty.
7. Of persons who are in danger of life and whose arrest is necessary for their protection.

Once an arrest without a warrant is made, the officer must immediately furnish the Department with information about the grounds for the arrest so that an application for a warrant can be made. The American Samoa Code provided that a person arrested can be detained for 24 hours with a warrant when the officer believes confinement is necessary for the safety of the person arrested or the public.

Handling of Arrested Persons.

Advising Person Arrested of Rights. An officer making an arrest should advise a person of the charge for which the arrest is made. The person arrested must also be advised of certain constitutional rights.

- b. **Use of Force.** Resisting arrest or interfering with an officer making an arrest is a separate crime. An officer may use reasonable force in the

process of taking a person into custody. Deadly force can only be used when immediately necessary to effect the arrest and when the officer reasonably believes the person to be arrested may endanger life or inflict serious physical injury unless arrested without delay.

- c. **Searching.** Searches are permissible without a warrant as an incident to a lawful arrest. Immediately upon arrest a frisk or feel search should be conducted. This is done primarily for the safety of the arresting officer and to obtain evidence of the crime. This is done by patting the outer garments of the person arrested. A more thorough search will be made when the person arrested is booked at the Police Station. Other than a police woman or matron, no officer shall be allowed to conduct a thorough search of any females. Only in exceptional circumstances, such as where the officer has reason to believe the female being arrested is carrying a weapon or evidence of the crime and no female officer is available to conduct the search.
- d. **Handcuffing.** Whenever a felony arrest is made, the person arrested shall be handcuffed by the arresting officer.
- e. **Injured Persons.** A seriously injured or sick person being arrested should be taken promptly to a hospital and remain in the officer's custody pending further instructions from superiors.
- f. **Under the Influence of Drugs or Alcohol.** Persons being arrested who are under the influence should be taken to the hospital if their condition is such that they may cause injury to themselves if left unattended.
- g. **Mentally Unstable Persons.** Again, if the instability is such that the person may injury to themselves, hospital personnel should have the opportunity to examine such a person prior to being committed to prison.
- h. **Illegal Arrest.** An illegal arrest is the unlawful restraint of a person's liberty for no matter how short a time. If an officer arrests a person illegally, he is responsible and may be liable in civil action; and every person who aids in the arrest is equally liable for the arrest with the officer.

- i. Exempt from Arrest. Senators and representatives and any delegate from Swains Island in all cases except treason, felony or breach of the peace, shall be privileged from arrest during a session (including a special joint session) of the Legislature, and in going to and returning from the same.
- j. Arrest Report. Any officer making an arrest will complete the arrest and booking form provided by the Department as soon as possible.

SEARCH AND SEIZURE

Search: To look into or over in a careful and thorough manner in an effort to find or discover evidence of a crime.

Seizure: The taking possession of property by legal process.

All searches and seizures required probable cause to be valid. In general, probable cause to search means reasonable cause to believe.

- a. That a criminal offense is being or has been committed.
- b. Items of evidence pertaining to that criminal offense are on a person or in a specific place sought. In addition to probable cause to search, there must be probable cause to seizure which means there is reasonable cause to believe the item(s) located during a search is evidence of a criminal offense.

Search and Seizure Without a Warrant.

The general rule is that a search warrant should be obtained for all searches whenever there is time to do so and there is any doubt that a warrant is necessary. However, search warrant is not required to conduct a search:

Searches and seizures without a warrant may be made: 1) incidental to a lawful arrest; 2) in exceptional circumstances; 3) by consent.

- a. Incidental to a Lawful Arrest. The search must be made contemporaneously with the lawful arrest, i.e., close in time and space. Thus, a formal arrest should generally precede a search. Furthermore, the scope of the search is limited to either the immediate person of the arrest or the

area of things within his immediate control, such as containers, handbags, briefcases, knapsacks, etc. The reasons for the exception to the general search warrant requirement are either to prevent escape of the arrestee or the destruction of evidence or to protect the officer from injury due to concealed weapons. If any of these reasons exist, there is a valid search incident to an arrest.

- b. In Exceptional Circumstances. Exceptional circumstances are those occasions when sufficient probable cause exists to issue a search warrant, but circumstances are such that the evidence might easily be removed or destroyed before the search warrant could be served. Exceptional circumstances must exist both for the item sought to be seized and for the time frame in which the item is seized (e.g., hot pursuit or the taking of fingernail scrapings before the suspect is able to wash his hands, thereby destroying potential evidence). If there is no danger that the evidence will be lost or destroyed, a search warrant must be obtained.

When in doubt as to whether a search is justified under this exception, the officer should ask himself:

- ** Is there probable cause to search for the seizure evidence of the crime?
- ** Is there time to obtain a warrant and if not, why not?

There are several specific situations that fall within the exceptional circumstances rule.

1. Motor Vehicles. If the automobile sought to be searched is mobile, i.e., capable of being moved and if probable cause to search the vehicle exists, the issuance of a warrant may not be required if to do so would cause destruction or removal of the evidence. If, however, there is no danger that the vehicle will be moved during the time in which a search warrant may be sought, such warrant should be obtained while the vehicle is being guarded. It should also be noted that if a lawful arrest is made, a search incidental to that arrest may be made of the area inside the automobile within the reach of the arrested person.

2. **Booking Persons Arrested.** With regard to the inventory of an arrestee's property at the book-in desk at the time he is booked into jail, it is clear that the jailer can require the arrestee to surrender his property. In addition, the jailer may seize items which are in plain view and which he has probable cause to believe are evidence of a crime or are contraband.
3. **Items in Plain View.** Items in plain view may be seized if there is probable cause to believe such items are evidence of a crime and the officer who observes such items is justifiable in a place he has a right to be at the time he seizes such items. Generally, there are three conditions which must be met to uphold a plain view seizure. They are: 1) a justifiable prior presence (e.g., into an area of privacy by a method legally recognized as valid such as an officer on premises during the execution of a legal search such as one authorized by warrant, consent, exceptional circumstances or incidental to an arrest); 2) inadvertent discovery of the evidence by the officer (i.e., the main purpose of the officer was not to search for the item); and (3) probable cause to believe the item(s) are evidence of a crime. If these conditions are met, the item may be seized. Thus, an officer who is in a place where he has a right to be, may seize evidence, in plain view without the necessity of securing a search warrant.

By Consent or Waiver. Under this exception, probable cause to search is unnecessary. However, the suspect must voluntarily waive his Fourth Amendment Rights against any unreasonable searches and seizures; i.e., the waivers must be knowing and intelligent. As a result, a suspect in custody at the time a consent to search is sought should first be given his Miranda Rights and notified of his right to refuse consent. If possible, the suspect's written consent should be obtained. The suspect may revoke this consent. As a result, evidence discovered thereafter may be inadmissible unless the discovery of such

evidence can be premised on another exception of the general search warrant requirement (e.g., plain view, incidental to arrest, etc.). A third party other than the suspect may give consent if he possessed common authority over the premises or effects. Such consent is effective against the absent suspect with whom that authority is shared.

Search and Seizure With a Warrant

- a. **Introduction.** Any magistrate authorized to issue a warrant of arrest may issue a search warrant for property which constitutes fruits, implements or evidence of crime.
- b. **Information Required for Warrant.** A search warrant cannot be issued but upon probable cause shown by an affidavit which also describes the person or place to be searched and the property sought to be seized. As a result, the affidavit should contain a clear distinct description of the place to be searched and the items to be seized and disclose facts and circumstances which indicate there is probable cause for the search. In this regard, the affidavit should show both the information relied upon to justify the premises or person sought to be searched. Such information may be based on the officers personal knowledge, upon hearsay information from another officer, or upon hearsay from a citizen undisclosed confidential informant. When hearsay information of an undisclosed confidential informant is relied upon to establish probable cause, the information must be independently corroborated (e.g., by fact, demonstrating the past reliability of the informant or by the personal observation and corroboration of the officer).
- c. **Executing the Warrant.**
 1. **Information in Warrant.** An officer should carefully read the warrant before acting upon it. The warrant may contain important information such as naming the officer who is responsible for executing the warrant, identifying the time of day within which the search can be made and the date the warrant will expire.

2. **Entering Premises.** The executing officer shall, before entering any premises, knock, give appropriate notice of his identity, authority and purpose to the person to be searched or to the person in apparent control of the premises to be searched. If the officer is not admitted after identifying himself and announcing his purpose, force may be used to enter the premises. In emergency situations, a no knock entry may be permitted where the officers or others are in peril of bodily harm or where evidence is being destroyed.
3. **Notice of Warrant.** Before undertaking any search or seizure pursuant to the warrant, the executing officer shall read and give a copy of the warrant to the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control. The officer shall have a copy of the warrant suitably affixed to the premises.
4. **Use of Force.** In the course of executing a search warrant, the officer may take reasonable precautions to assure that property will not be removed while the search is being conducted and to prevent interference with the search. Thus, officers have the same power and authority in all respects to break open any door or window and to use all necessary and proper means to overcome any forcible resistance as they do in executing or serving a warrant or arrest.
5. **Search of Premises.** The scope of a search pursuant to a search warrant and the search must only be for those items specified in the warrant to be seized (e.g., a search of drawers for a stolen television set is improper). Thus once the items specified in the warrant are discovered, the search must be terminated. However, if during the execution of a warrant, other evidence of a crime is discovered, such evidence may be seized under the plain view exception, even though it is not mentioned in the warrant.
6. **Search of Persons.** A search warrant for a residence or other premises does not permit a search of all the persons present during the time of the search. But, if there is probable cause to believe that persons on the premises are carrying concealing to determine whether they are concealing items covered by the warrant. Additionally, if such persons are reasonably suspected of: 1) having committed a crime and 2) being armed, they may be frisked for weapons.
7. **Duration of Search.** An officer may remain on the premises described in a search warrant only during the time reasonably necessary to conduct the search for the property described in the warrant.
8. **Receipt of Evidence Taken.** Upon execution of the search warrant, the officer will leave a copy of the warrant and receipt specifying in detail the property taken with person from whom such property was taken, or in whose possession it is found, or in the absence of any person, the officer will leave the receipt in the place where the property was found.
9. **Return of Warrant.** A return is made by officer conducting the search by making an inventory of the items seized and filing that inventory with the court. This process should be completed immediately upon completion of the search and surrendering the items seized to appropriate officials within the Department.

Search Warrants for the Protection of Children.

The court may issue a search warrant for the recovery of any child (juvenile) believed to be delinquent, neglected or in need of supervision. The warrant will direct an officer to execute it in the daytime unless it is necessary to conduct the search at some other time. To execute the warrant the officer will need a copy of it, as well as the supporting affidavit and application for the warrant. All three must be served upon the person in possession of the place to be searched. If the child is found, the child may be taken into custody.

Illegal Search. Officers who search the person or premises of another with a void warrant or conduct

an unreasonable search may become the civilly liable for resultant damages. Any evidence seized in an unlawful search can be suppressed upon a proper motion in court.

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STATEMENTS BY CRIMINAL SUSPECTS

Introduction. Recent court decisions have made rules about questioning criminal suspects and guidelines have been established for situations in which accused persons were or were not required to be advised of their rights. These rules and guidelines must be carefully observed by officers. If statements of the accused are improperly obtained, the court will not permit such statement to be admitted in the accuser's trial.

Warning of Rights. On the following page is the form used by the Department. You do not have to use this form for an effective waiver but every officer should have these forms available at all times. Using them eliminates errors and provided written evidence of the waiver.

When Warnings Need Not Be Given.

- a. Warning need not be given to non-suspects.
- b. Warning need not be given when an officer is making a general on-the-scene investigation, even if the ultimate defendant is present and is questioned.

When Warnings Must Be Given. Warnings must be given prior to any in-custody interrogation. "In-Custody Interrogation" means any interrogation initiated by an officer after arrest, or after a person is taken into custody, or after a person's freedom of action is denied in any significant way, i.e., any time the person is not free to leave.

Volunteered Statements. Statements by one in custody or under arrest may nevertheless be volunteered. If any person in custody volunteers a statement of any kind, it is not necessary to interrupt him to give the warnings, but he may not be questioned further without giving the warning. A statement would not be volunteered if given in response to a question. It may be volunteered if the

suspect initiates a conversation concerning the crime and indicated he wants to talk about it.

Confinement of Suspect. You may talk to any suspect without giving the warning anywhere except at the Police Station so long as the suspect is free to leave at any time and you so tell him. This is so even though you know the suspect has been identified as the perpetrator of a crime.

- a. Discretion must be used here. For instance, you could not interview a man in his own home by surrounding him with several officers and excluding his family.
- b. If a suspect is placed in a police car at the scene of the investigation, yet not arrested, he may be questioned without the warning so long as he is told he is not under arrest and is free to leave at any time.

Exercise of Rights by Suspect. In those situations where the suspect has been advised, the following rules apply.

- a. If the suspect indicates in any manner that he wants an attorney present or wants to see an attorney first, he may not be questioned further without first complying with his request.
- b. If the suspect is alone with the police and he indicates in any manner that he doesn't want to talk, he may not be questioned further until he sees an attorney or until he volunteers that he has changed his mind and now wishes to talk. An officer may not prompt or persuade the suspect to talk after he indicates he does not wish to do so. The officer may not do anything affirmative to change his mind.
- c. The suspect controls the questioning. He may refuse to answer any specific question even though he is willing to answer others. He may terminate the interview any time he wishes, and any officer may not continued to question him.
- d. The police may not prevent an attorney from seeing his client without risking the loss of any statement the suspect makes thereafter.
- e. **Waiver of Rights by Suspect.** Here are some rules to follow concerning the waiver and follow-up questioning.

- I. If possible, have two officers witness the waiver, and preferably attend the entire interview.
2. The waiver must be clear, the maker must actually say that he does want to talk and that he does not want to see an attorney first or have one present. It is not enough that he simply understands the warning and then talk. by officers. If statements of the accused are improperly obtained, the court will not permit such statement to be admitted in the accuser's trial.

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- b. If the suspect is alone with the police and he indicates in any manner that he doesn't want to talk, he may not be questioned further until he sees an attorney or until he volunteers that he has changed his mind and now wishes to talk. An officer may not prompt or persuade the suspect to talk after he indicates he does not wish to do so. The officer may not do anything affirmative to change his mind.
- c. The suspect controls the questioning. He may refuse to answer any specific question even though he is willing to answer others. He may terminate the interview any time he wishes, and any officer may not continued to question him.
- d. The police may. not prevent an attorney from seeing his client without risking the loss of any statement the suspect makes thereafter.
- e. Waiver of Rights by Suspect. Here are some rules to follow concerning the waiver and follow-up questioning.
 - I. If possible, have two officers witness the waiver, and preferably attend the entire interview.

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2. The waiver must be clear, the maker must actually say that he does want to talk and that he does not want to see an attorney first or have one present. It is not enough that he simply understands the warning and then talk.
3. An officer must be certain the suspect to understands his rights. If he is intoxicated, tired or injured have a doctor see him first, if possible, and note the doctor's opinion as to whether the suspect can understand.
4. Keep an accurate account of the duration of the interview who is present, place of interview, time spent on discussion of the specific crime, etc.
5. The suspect must be advised each time he is interviewed. Waivers must be given for each interview.
6. If a statement is made, try to have the suspect write the statement in his own handwriting.

A form is available in both English and Samoan for purposes of recording such statements and this form should be used where possible.

7. Any waiver must be a knowing and intelligent one. If the suspect's primary language is not English or Samoan, the officer must ascertain whether the person to be questioned has a good command of English or Samoan, and if not, locate an appropriate interpreter.

Juveniles

Defined. A juvenile is any person under the age of 18 years.

Taking Custody of Juvenile. A juvenile may be taken into temporary custody by an officer without order of the court under the following conditions.

- a. When there are reasonable grounds to believe that the juvenile has committed an act which would be a felony or a misdemeanor if committed by an adult, except that traffic

violations shall be handled as otherwise provided by law.

- b. When the juvenile is abandoned, lost or seriously endangered in his surroundings or seriously endangers others and immediate removal appears to be necessary for his protection or the protection of others.
- c. When there are reasonable grounds to believe that the juvenile has run away from his parents, guardian or legal custodian.

The taking of a juvenile into temporary custody under this section is not an arrest nor does it constitute a police record.

Notice to Parents or Guardians. When a juvenile is taken into temporary custody, the officer shall notify a parent, guardian, or legal custodian as soon as possible and not to exceed 12 hours and inform him that, if the juvenile is placed on detention pursuant to Section of Taking Custody of Juveniles, a, of this annex, all parties have a right to a prompt hearing to determine whether the juvenile is to be detained further. The notification may be made to a person with whom the juvenile is residing with a parent, guardian or legal custodian cannot be located, it shall be the duty of the officer taking the juvenile into custody to make the notification. No juvenile which falls under the above section of the annex, shall be placed in detention but may be placed in a shelter facility provided by the Government.

Release or Further Detention. The juvenile shall then be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the juvenile is released may be required to sign a written promise or forms supplied by the court, to bring the juvenile to the court at a time set or to be set by the court. Except as provided in this section, a juvenile shall not be detained by law enforcement officials his name, age, residence and other necessary information and to contact his parents, guardian or legal custodian.

Notice Court. The officer or other person who takes a juvenile to a detention or shelter facility shall immediately notify the court and/or any agency or persons so designated by the court that the juvenile has been taken into custody and where he has been

taken. He shall also promptly file a brief written report with the court and/or any agency or persons so designated by the court stating the facts which led to the juvenile being taken into custody and the reason why the juvenile was not released. The officers shall also notify a parent or legal guardian or, if a parent or legal guardian cannot be located within the Territory, the person with whom the juvenile has been residing to inform him of the right to a prompt hearing to determine whether the juvenile is to be detained further. If the officer taking the juvenile into custody is unable to make the notification, it may be made by any other law enforcement officer, juvenile officer, detention center officer or jailer in whose physical custody the juvenile is placed.

Confidentiality of Records. The records of law enforcement officers concerning all juveniles taken into temporary custody or issued a summons shall be maintained separately from the records of arrest and may not be inspected by or disclosed to the public, including the names of juveniles taken into temporary custody or issued a summons, except.

- a. By order of the courts.
- b. When the court orders the juvenile to be held for criminal proceedings as an adult.
- c. When there has been a criminal conviction and a presentence investigation is being made on an application for probation.

No fingerprint, photograph, name, address or other information concerning identity of a juvenile taken into temporary custody or issued a summons may be transmitted to any person or agency except a local law enforcement agency when necessary to assist in apprehension or to conduct a current investigation, or when the court orders the juvenile to be held for criminal proceedings as an adult.

Place of Confinement. No juvenile under the age of 18 years shall be detained in jail, lockup or other place used for the confinement of adult offenders or persons charged with crime. **Release of Information to the Public.**

Introduction. The public has a limited right to information about incidents potentially involving criminal behavior and police investigations. This right is limited because the premature release of

information could jeopardize a successful investigation or endanger the rights of the accused. Release of improper information could also make it impossible for the court to select an impartial jury, especially in a small place like Samoa. It is for these reasons that police officers should generally refrain from providing information to the public or the press about their official activities. The detective commander of the Department has been designated as the press relations officer and inquiries from the press about a case or suspect should be referred to this official.

Information Which May Be Released.

- a. The identity of the accused (except if a juvenile).
- b. The offense(s) charged.
- c. The identity of the victim(s), with the exception of victims of various sex offenses.
- d. The circumstances of the arrest and physical evidence seized, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest.

Information Which Should Not Be Released.

- a. The prior criminal record of the accused.
- b. The existence or content of any admission or confession, or the accuser's refusal to make statement.
- c. The performance or result of any examination or test, such as a chemical test, etc.
- d. The identity or credibility of prospective witnesses.
- e. The possibility of pleas of guilty to the charge(s) or any other possible charges.
- f. Any opinion as to the accuser's guilt or innocence.

Reports

It is the responsibility of every officer to file reports covering all activities undertaken while on duty and when responding to duty while off-duty. Daily reports must be made with respect to each duty shift. In

additions, there are a number of other reports that must be made with respect to particular matters:

1. Action Sheet, form PD-102
2. Assault Report, form PUB/SFTY-8
3. Arrest Report, form-PUB/SFTY-10
4. Continuation Sheet, form PUB/SFTY-15
5. Juvenile information Report, form PUB/SFTY-7
6. Miscellaneous Crime/Non-Crime Report, form PUB/SFTY-9
7. Motor Vehicle Accident Report, form PUB/SFTY-11
8. Property Report, form PD/107
9. Theft Report, form PUB/SFTY-5
10. Daily Activity Report DPS-38
11. Withdraw Form
12. Waiver Form
13. Voluntary Statement
14. Vehicle Check Form

It is important to complete reports and turn them in at the end of each shift. Approval should be obtained from an officer's watch commander before any report is kept by an officer beyond the end of a shift in which the incident has occurred.

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1978

— ANNEX —“R”

PUBLIC WORKS

DISASTER ASSISTANCE Planning &
COORDINATION OFFICE

DEPARTMENT OF PUBLIC SAFETY

AMERICAN SAMOA GOVERNMENT

ANNEX R PUBLIC WORKS

P. 1. PURPOSE

This annex provides further flexible emergency response capability for engineering, construction, and repair and restoration of essential public facilities and services including critically important utilities that may be under control of private businesses. Particular attention should be paid to capability for debris clearance and post disaster safety inspections of damaged structures. Public Works may provide support for heavy rescue operations and may play a key role in establishing multipurpose staging area.

II. CONCEPT OF OPERATIONS

A. GENERAL

1. It is the responsibility of the Department of Public Works to restore and maintain utilities, engineering and construction services except electricity and communication.
2. Accomplish damage assessment.
3. Repair roads and bridges for safe use.
4. Maintain debris and garbage disposal operations.
5. Support repair of airport facilities in coordination with the airport administration, as necessary for safe operation.
6. Provide temporary housing.
7. Provide assistance to support heavy rescue operations with the Fire Rescue Unit.

B. SITUATION

1. The American Samoa Power Authority provide emergency power where it is required.
2. Restore and maintain electrical services.

TERRITORY OF AMERICAN SAMOA

DISASTER ASSISTANCE PLAN

1988

— ANNEX —“S”

DIRECTION AND CONTROL

TERRITORIAL EMERGENCY MANAGEMENT
OFFICE

DEPARTMENT OF PUBLIC SAFETY

GOVERNMENT OF AMERICAN SAMOA

DIRECTION & CONTROL

A. GENERAL

The Governor of American Samoa is responsible for Direction and Control over all Comprehensive Emergency Management activities in the Territory. He will insure rapid dissemination of warning information and call in the crisis management staff through the Commissioner of Public Safety, the TEMCO staff, the Emergency Coordinating Committee, depending upon severity and magnitude of Disaster or Emergency situation.

The Governor may issue executive orders, proclamations, and regulations, and amend or rescind them. Executive Orders, proclamations, and regulations have the force and effect of law.

An Executive Order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the Office of the Commissioner of Public Safety and the Office of the Territorial Registrar. To the greatest extent practicable, the Governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or regulations, but nothing herein restricts his authority to do so by orders issued at the time of the disaster/ emergency.

B. Emergency Operations Center (EOC)

The Emergency Coordinating Committee, under the direction of the Commissioner of Public Safety with the assistance of TEMCO Coordinator, assumes direction and control activities from the temporary EOC, now located at the Police Dispatch Center of the Department of Public Safety in Fagatogo. It is capable of sustaining operations involving (20) people for a minimum of 14 days. The construction of a primary EOC, complete with update Communications and centralized control is in the final stage.

FUNCTIONS & OPERATING AN EMERGENCY
OPERATING CENTER

(EOC) Operating the EOC:

Activation of Emergency Operating Center may become necessary. Simple procedures for activating the EOC should be clearly delineated in the EOC Standard Operating Procedures (SOP).

1. Authority: The Governor/Lt. Governor, the Commissioner of Public Safety or the Disaster Coordinator will activate the Emergency Operating Center. He will insure rapid dissemination of warning information and call in the crisis management staff, the “Coordinating Committee”, depending upon severity and magnitude of disaster or emergency situation.
2. Conditions: Under any disaster or emergency situation, the Commissioner of Public Safety or the Disaster Coordinator may authorize to activate EOC and emergency staff for a surprise emergency exercise.
3. Alerting: An “Alert List” of all Crisis Management Team, in the event of an emergency in which telephone or beeper service is interrupted, staff members should see to the safety of their families and then report to the Emergency Operating Center. (EOC).

Phone Alert: The Governor or the Lt. Governor will normally receive first notification of an emergency. Whichever agency is first notified, it will ensure that others are aware of the situation, and then notify their own departments or agencies Alert Lists are as follows:

“PRIMARY”.

ANNEX R Functions & Operating an EOC - “SOP”

Shifting Scheduling - As soon as possible after the onset of the emergency, 12 hour shift schedules are to be prepared by each EOC section or shift and posted on the bulletin board. Relief shifts should arrive 30 minutes early so that briefing can be conducted on what has occurred, what decisions have been reached, and what problems remain.

Coordinating Committee Members occupying the EOC.

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- 1st Shift
1. Governor
 2. Commissioner of Public Safety
 3. Disaster Coordinator
 4. Messenger/Plotter
 5. Weather Service Manager
 6. Communications Director
 7. PWD Director
 8. Port Director

- 2nd Shift
1. Lt. Governor
 2. Deputy Commissioner
 3. Messenger
 - 5.
 - 6.

3. assistance needed from other agencies or outside organizations;
4. information developed that should be passed to other EOC members or to the public.

Additional briefings may be organized at the request of the Governor or the Commissioner of Public Safety. These may include VIP, news media briefings and situation reviews for newly arrived Federal representatives.

Computer Room:

- 1st Shift
1. Communication Officer
 2. Computer Analyst

- 2nd Shift
1. Communication Officer
 2. Computer Analyst

Conferences of key EOC personnel may be covered at any time by the Commissioner of Public Safety to discuss and resolve major issues. These conferences will be held in the Disaster Coordinators office.

Watch Commander Room

- 1st Shift
1. Watch Commander

- 2nd Shift
1. Watch Commander

1. The Governor is responsible for ensuring that any decisions reached at conferences are quickly relayed to all EOC personnel. The Disaster Program Coordinator will assist the Commissioner of Public Safety on all aspects during Disaster.

Inside E O C

- 1st Shift
1. Medical Director
 2. Fire Chief
 3. Star Kist Manager
 4. Samoa Packing Mngt.
 5. Red Cross Mngr
 6. Radio Samoa (WVUV) Mngr.
 7. Public Information Mngr.
 8. ASPA Director
 9. Secretary of Samoan Affairs
 10. USCG Liaison Officer
 11. US Army Reserve Unit Commanding Officer

- 2nd Shift
1. Medical Director Deputy
 2. Asst. Fire Chief
 3. Asst. Mngr. Star Kist
 4. Asst. Mngr. Samoa Packing
 5. Attorney General
 6. Director, DOE
 7. Director, Agriculture
 8. Mngr. South West Marine
 9. Director, Marine Resources
 10. Director, Parks & Recreation
 11. Airport Manager

2. The Commissioner of Public Safety is responsible for ensuring that all required reports are forwarded to FEMA Region IX on time. He is also responsible for preparing and sending any special reports on damages; threats, and assistance needed.
3. The Messenger/Plotter is responsible for plotting a course or position on maps of said disasters direction as well as informing EOC sections involved in disseminating information.
4. The Communication Director is responsible for all incoming and outgoing messages as well as instructing his department personnel responsible for restoration of the Territorial Communication system.

Functions & Operating an EOC - “SOP”

Briefing and Conferences:

Briefings for the Coordinating Committee Members occupying the Operation Room are scheduled for six-hour intervals. The Disaster Coordinator will post a briefing schedule on the bulletin board. EOC operations Room Members should prepare to participate in these briefings a three-minute summary of its progress. The briefing will include:

1. unresolved problems;
2. major new problems during previous six hours;

5. The Director of Public Works is responsible for public facilities which reported sustain damages. He will instruct his people of making necessary repairs is well as clearing debris on public highways by using equipment necessary to the extent of the nature of disaster. In any case he must ensure that all services pertaining to Public Works be performed. He must also instruct his Water Utility Branch to look carefully into water contamination status. He must advise the

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Government Motor Pool to have sufficient fuel to operate all government vehicles when required.

6. The Director of Port Administration will be responsible for surface vessels inside the harbor in terms of evacuation when required. He will instruct all government vessels to standby for further instructions when required.

Computer and Communication Room

1. The Communication officer transmit & received, messages and should be precise, concise and clear when information is passed onto the Operation Room where the actual dissemination of information will be executed and log. Copies of all messages sent and received should be kept for record and for post emergency analysis. (2nd shift replacement will execute same order).
2. The Computer Analyst is responsible for any computer information received. He/She will inform the Operation Room personnel with information received. (2nd shift replacement will execute same order).

Inside EOC Members as required

1. The Medical Health Director is responsible for all medical care units and treatment stations throughout the island. He/she will instruct medical staff at the main hospital for patients evacuation when deem necessary. He/she will also provide necessary medication for the EOC members. He/she will also look into obtaining sufficient sanitary supplies to meet needs of assigned EOC staff for a two week period. (2nd shift replacement will execute same order).
2. The Fire Chief responds to any fire information received and responsible for maintaining fire resources chart which displays deployment and availability of fire units and status of fire mutual aid forces.
3. Secretary of Samoan Affairs is responsible for the direction of all County chiefs, so that they can inform all village Pulenu'us to alert village people to take shelter or evacuate when instructed. The Secretary also recommends the Governor or the Commissioner of Public Safety

in matters concerning the local government (aiga-family) during disaster and emergency.

4. ASPA Director is responsible for the restoration of power and make recommendation to the EOC member during disaster and emergency.
5. U.S. Coast Guard Liaison officer will maintain close contact with the U.S. Coast Guard District Headquarters in Honolulu, Hawaii - District 14, concerning possible Coast Guard assistance when required. U.S. Coast Guard officer also makes recommendation to the LOC committee members during disaster & emergency.
6. U.S. Army Reserve Commanding Officer (American Samoa Unit) will be responsible for possible evacuation on transportation of victims to the hospital at the direction of the Governor. This Commanding Officer also makes recommendation to the EOC committee members during disaster and emergency.
7. Radio Samoa Representative will be responsible for the Emergency Broadcast System (EBS) at all times during disaster. The representative will be receiving information regarding the disaster and will immediately forward to the studio (WVUV station) for public information. He/she will comply with procedures in accordance with the Basic Emergency Broadcasting System. WVUV Radio Station announcer will confirm the disaster information with TEMOC, activate the American Samoa EBS and issue the appropriate information.
8. The Public Information officer is responsible for informing BOC sections of special information needs by County Chiefs for Pulenu'us (village mayors) in the field to respond to citizen inquiries. Locations and services offered at temporary medical, feeding or congregate care facilities, in particular, should be rapidly disseminated to all emergency workers in the village.
9. The Star Kist Manager coordinate with the Director of Port Administration for emergency assignments of vessels under their jurisdiction when required. He/she makes recommendations to EOC Member pertaining to canneries

operations and evacuation when established and adhered to.

10. The Samoa Packing Manager have the same imposition of work as the Star Kist Manager.
11. The Red Cross Management is an emergency oriented service agency that focuses its efforts on meeting the emergency needs of disaster victims. The Red Cross Representative Coordinates with TEMCO when disaster strikes. His/her role in the EOC is to advice TEMCO of feeding stations, shelters ETC and other facilities as appropriate.
12. The Director of Education will coordinate with the Red Cross and make available school facilities for use in feeding and shelter, food supplies ETC. Role in the EOC is to make recommendation as to which school facilities available for shelter if required.
13. The Director of Agriculture will advise the Governor during the disaster on availability of food through out the island. The director will monitor status of food resources and will be in charge for food supplies in the EOC staff for a two week period.
14. The Director of Marine Resources will coordinate with TEMCO and assist Port Administration to provide vessels on a search and rescue operations as well as make water craft available for evacuation or transportation of disaster victims when deemed necessary.
15. Airport Manager will keep the Governor, the Commissioner of Public Safety of any information received and will activate Emergency Procedures Plan for the airport. Keep EOC members advised of service ability of runway and facilities.
16. The Director of Parks & Recreation will be responsible in furnishing administrative supplies for efficient emergency operations and janitorial services for at least a two-week period.
17. The Ronald Reagan Marine Railway Manager will coordinate with TEMCO and assist Port Administration on necessary actions. He/she will

advise the EOC on expeditious completion and launching of vessels in work status.

18. The Attorney General will advise the Governor and the Commissioner of Public Safety on legal matters, also provide legal counsel to disaster victims. The Attorney General must look into proper language be used when the Governor requests of Presidential Declaration.

EOC Directors and staff should maintain the highest level of preparedness, both the EOC facility and its personnel be exercised on a regular basis. They must be the understanding implementation plans and procedures, and using the EOC to maximum potential. Each EOC Member should be given individualized attention. Ultimately, be prepared to react with current data, functioning equipment, and trained personnel.

26.0209 Appendix A—ASCMP objectives and policies.

GOVERNMENT PROCESSES

- (a) Territorial Administration.

Objective:

Provide more effective and sensitive administration of laws, regulations and programs.

Policy:

A coordinated, expeditious, and comprehensive permit and project notification and review system shall be instituted.

The technical capability of agency personnel shall be increased.

Sensitivity to fa'a Samoa in the exercise of government administration shall be increased.

- (b) Village Development.

Objective:

Provide more effective and better coordinated territorial aid to villages.

Policy:

Assistance to foster village development and improvement shall be coordinated through the village development plans in ways sensitive to village needs

and preferences. Village development plans shall incorporate all ASCMP objectives and policies. (c) Shoreline Development.

Objective:

Assure that lands adjacent to the sea are developed in a way least damaging to coastal resources and that reduces the risk of damage resulting from coastal hazards.

Policy:

In the area measured 200 feet horizontally inland from the mean high-tide mark, uses, developments, and activities shall be rigorously reviewed to determine whether they:

- (1) are susceptible to damage from shoreline erosion or other identified coastal hazards; or
- (2) diminish visual and/or physical access to the shoreline; or
- (3) may result in degradation of coastal resources.

Those uses, developments or activities which may result in any of the above impacts shall normally be denied. Exceptions may be allowed if the proposed use, development, or activity:

- (1) serves a needed public purpose, including recreation; or
- (2) is water dependent or water-related; and
- (3) is compatible with adjacent land uses or traditional Samoa uses; and
- (4) has no feasible environmentally preferable alternative sites.

In areas immediately adjacent to the landward and seaward side of the mean hightide line, proposed uses, developments, and activities shall also be evaluated using the U.S. Army) Corps of Engineers permit application, evaluation factors to the extent applicable.

(d) Coastal Hazards.

Objective:

Reduce hazards to life and property from flooding, slides, and shoreline erosion.

Policy:

Proposed development in areas prone to stream and ocean flooding, slides, and shoreline erosion shall only be permitted if:

- (1) there is a public need; and
- (2) there are no feasible environmentally preferable alternative locations; and
- (3) the development is located and designed to minimize risks to public safety.

The following standards shall apply to location and design of development in areas prone to flooding, slides, and erosion:

- (1) Uses that will not require protection through dikes, dams, and levees or other structures shall be preferred over uses that require such protection.
- (2) Uses that pose the least risk to loss of life and damage to property shall be preferred over uses that pose such risks.
- (3) Development permitted in areas prone to flooding shall be designed to allow passage of water to the extent feasible.

Structures to protect existing development against flooding and erosion shall only be permitted if:

- (1) there is significant risk to public health and safety;
 - (2) there are no feasible environmentally preferable alternatives;
 - (3) habitats that may be affected are identified and their values evaluated;
 - (4) adverse effects on nearby areas are minimized;
 - (5) alterations of the natural shoreline are minimized;
 - (6) adverse effects on habitats, streams, and drainage are minimized.
- (e) Fisheries Development.

Objective:

Promote fisheries development in a manner consistent with sound fisheries management.

Policy:

Shoreline are as suitable and necessary for the support of fishery development shall be reserved for such use.

Fisheries development shall be guided by a fisheries management program which conserves stocks, protects marine habitats, and maintains sustained yields.

(f) Slope Erosion.

Objective:

Reduce soil erosion.

Policy:

Road building and construction activities that severely alter land contours, occur in steep areas, or may otherwise promote soil erosion shall be minimized and controlled to reduce or eliminate soil erosion.

Clearing, grading, or construction on slopes greater than 40% shall be avoided and be permitted only if no feasible, environmentally preferable alternatives to the proposed activity exist.

All clearing, grading, or construction on slopes shall use best available techniques to avoid or minimize soil erosion. These shall include, but not necessarily be limited to:

- (1) minimizing on-site disturbance through careful design of road drainages utilizing knowledge of soils, vegetation, and terrain, and other available techniques;
- (2) retaining soil through use of retaining walls and other applicable techniques to minimize slope cutting; and
- (3) controlling off-site movement of soil through replanting disturbed land immediately after construction with soil stabilizing plants and other available techniques.

(g) Major Facility Siting.

Objective:

Assure the proper siting of major facilities.

Policy:

Major facilities shall be sited and designed to minimize adverse environmental and social impacts and promote orderly and efficient economic development. Major facilities not dependent on a waterfront location shall be located elsewhere unless no feasible alternative sites exist; water dependent major facilities will be accommodated through planning. Conservation of resources shall be a primary goal of the territory.

The territory shall recognize identified regional benefits and national interests in the siting of major facilities and shall adequately consider them in major facility siting decisions.

(h) Agricultural Development.

Objective:

Promote agricultural development in a manner consistent with sound conservation practices.

Policy:

Commercial and subsistence agriculture shall be encouraged and improved on lands suitable for cultivation. Agricultural activity shall be accompanied by sound agricultural practices designed to protect land and water resources and maintain crop yields, which include:

- (1) cultivation on suitable slopes;
- (2) use of adequate ground cover to prevent soil erosion;
- (3) proper use of pesticides, herbicides, and fertilizers; and
- (4) techniques to maintain soil fertility; e.g., fallow periods.

RESOURCES

(i) Reef Protection.

Objective:

Protect and restore coral reefs.

Policy:

Coral reefs and other submerged lands shall not be dredged, filled, or otherwise altered or channeled unless it can be clearly demonstrated that there is public need, there are no feasible, environmentally

preferable alternatives, and unless measures are taken to minimize adverse impacts. Coral reefs shall be protected from sedimentation, overfishing, runoff, and the impacts resulting directly and indirectly from other activities to the extent feasible. Degraded reefs shall be restored wherever feasible.

(j) Recreation/Shorefront Access.

Objective:

Improve and increase recreation opportunities and shorefront access for both residents and visitors.

Policy:

The acquisition, siting, development, and maintenance of varied types of recreation facilities that are compatible with their surrounding landscape and land uses, and which serve the recreation and shorefront access needs of villages and urban areas, shall be promoted. Acquisition and/or use agreements and minimal development of passive recreation sites such as marine and wildlife conservation areas, scenic overlooks, trails, parks, and historic sites shall also be promoted.

Public access to and along the ocean shall be improved and increased. Beach areas suitable for recreation use shall be reserved for such use and physical access to these areas shall be provided where feasible. Visual access to the ocean from the road parallel to and near the shoreline shall be maintained where feasible.

(k) Water Quality.

Objective:

Maintain and, where necessary, restore high water quality.

Policy:

Territorial and federal water quality standards shall be the standards of American Samoa in the coastal zone. Consistent with these standards, degraded water quality shall be restored to acceptable levels and potential threats to water quality shall be prevented from degrading water quality where feasible.

(l) Marine Resources.

Objective:

Protect marine resources for present and future generations.

Policy:

Living marine resources and their habitats shall be protected from over harvesting or degradation.

No taking of marine mammals, or endangered or threatened species, including the green sea and hawksbill turtles, shall be allowed.

(m) Drinking Water Quality.

Objective:

Provide and maintain safe drinking water.

Policy:

Drinking water sources, both above and below ground, shall be protected from contamination due to sedimentation, saltwater intrusion, or other sources of pollution.

Drinking water systems shall be improved to protect public health and welfare.

(n) Unique Areas.

Objective:

Protect unique areas and their values from insensitive development.

Policy:

Unique areas, including wetlands, mangrove swamps, aquifer recharge areas, critical habitat areas, floodplains, streams, watersheds and near shore waters, shall be protected against significant disruption of their physical, chemical, and biological characteristics and values. Only uses dependent on such areas shall be permitted.

Development in areas adjacent to unique areas shall be designed and sited to prevent impact that would significantly degrade such areas.

(o) Archaeological/Cultural/Historic Resources.

Objective:

Protect the archaeological, cultural, and historic resources of American Samoa.

Policy:

Significant Samoan archaeological, cultural, and historic sites, artifacts, and lifestyles shall be protected and preserved.

(p) Air Quality.

Objective:

Maintain high air quality.

Policy:

Territorial and federal air quality standards shall be the standards of American Samoa in the coastal zone. Variance from those standards will be considered where such variance is justified, consistent with these standards, and will not result in significant air quality degradation.

SPECIAL AREAS

(a) Pago Pago harbor.

Objective:

Develop the Pago Pago harbor area in a way that emphasizes its irreplaceable value as a working port and safe harbor, and protect its natural resources, including water quality.

Policy:

The following use priorities shall be established for Pago Pago Harbor as delineated by a line drawn across the bay from the Rainmaker Hotel to the jetty at Leloaloa and the main road paralleling the shoreline.

- (1) Water dependent uses and activities shall have highest priority;
- (2) Water-related uses and activities shall have second priority;
- (3) Uses and activities which are neither water-dependent nor water-related but which are compatible with water dependent and water-related uses and activities, shall receive third priority. All other uses and activities shall have lowest priority. Such uses shall be encouraged to locate or relocate in other designated commercial, industrial, or residential areas.

(b) Pala Lagoon.

Objective:

Policy:

Enhance and restore the water-quality, fish and wildlife, and recreation values of Pala Lagoon.

Policy:

The following use priorities shall be established for Pala Lagoon and its adjacent wetlands and beaches:

- (1) Nonpolluting, nondestructive uses and activities, such as fishing, swimming, shelling, mariculture, boating (including launching facilities and access), and necessary restoration measures shall receive highest priority.
- (2) Those uses and activities which would interfere with the natural characteristics and values of the lagoon and are not necessary for restoration or recreation shall receive lowest priority:
- (3) The villages adjacent to the lagoon shall receive high priority for hookup to the government sewer system.

History: Rule 12-88. eff 4 Dec, § 1.

26.0210 Appendix B-DPO land use permit review and enforcement.

Development planning office land use permit review procedures are as follows:

- (1) Land use permit application forms shall be made available at DPO in Utulei on Tutuila and at the department of public works (DPW) on Ofu and Ta'u. A completed application shall be filed with the American Samoa Coastal Management Program (ASCMP) at DPO for each proposed project, use, or activity which in any way impacts the American Samoa coastal zone.
- (2) For projects determined to be major by DPO/ASCMP in accordance with technical guidelines submitted by each review agency respective of their particular areas of environmental concern, conference between the applicant and the ASCMP Review Agencies will be necessary in order to assist the applicant to determine what local and federal permits, licenses, or other clearances may be necessary. The Review Agencies will also explain to the applicant what additional information is required in order to process the, application. When all

necessary information and supporting documents have been submitted, the DPO/ASCMP shall certify the application complete.

- (3) DPO/ASCMP shall post notice of all major projects at DPO. It shall also cause such notice to be published in a newspaper of general circulation. A public hearing shall be held if requested by 25 persons in writing, or if deemed necessary by consensus of the Review Agencies. DPO shall publish notice of public hearing at least 7 days but no more than 21 days before such hearing. The Review Agencies will evaluate the application against their own criteria (e.g. underground storage tank regulations in the case of the Environmental Quality Commission (EQC)), as well as the 16 ASCMP policies in Appendix A, as provided in 26.0205. DPO will concurrently review permit applications for consistency with ASCMP policies. The Review Agencies' technical findings and recommendation on the proposed project, as well as any public comments, shall be collected and consolidated by DPO for final consideration by the Review Agencies.
- (4) For major projects, and once a zoning variance decision has been reached (if necessary), DPO shall approve, disapprove, or condition a land-use-permit application within 30 days of certifying an application complete; otherwise approval may be presumed. However, if a public hearing is required by this chapter or by the procedures of other review agencies, DPO/ASCMP shall make a final decision within 30 days of the day after the last public hearing. Where a federal consistency determination or certification is required, pursuant to federal regulations (15 CFR 930), or certification from any other relevant regulatory agency, the time period established in those regulations will apply.
- (5) For minor projects, DPO shall approve, disapprove, or condition a land use permit application within 10 days of certifying an application complete; otherwise, approval may be presumed.

- (6) DPO/ASCMP may inspect approved projects to ensure that they are being conducted in a manner consistent with the ASCMP policies and with the land use permit under which the project is authorized. In cases where the ASCMP manager has reasonable cause to believe that a violation of this chapter or rule adopted pursuant to it has occurred, he may issue a stop order to the person(s) responsible for the violation. The stop order must specify the provisions of this chapter or rule or regulation alleged to be violated, and the facts alleged to constitute a violation, and may include an order that necessary corrective action be taken within a reasonable time. In the event the person fails to comply with the order, the ASCMP manager may apply to the High Court for an injunction.

History: Rule 12-88, eff 4 Dec 88, § 1.

26.0211 Appendix C—Definitions.

The following - definitions apply in this chapter:

- (1) “Alternative” means one of a number of choices. An alternative location may involve areas off the project site not owned or controlled by an applicant.
- (2) “Archaeological/cultural/historic resources” means those sites, structures, and artifacts which possess material evidence of human life and culture of the prehistoric and historic past, or which have a relationship to events or conditions of the human past.
- (2A) “ASCMP manager” means the person designated by the director of development planning who is responsible for the overall implementation and administration of the ASCMP.
- (3) “Beach” means an accumulation of unconsolidated deposits along the shore with their seaward boundary being at the low-tide or reef-flat platform level and extending inland to the strand vegetation or, where none is present, to the limits of the unconsolidated materials,
- (4) “Best available techniques”: see Appendix E of “Wastewater Management Data Evaluation Study for American Samoa”, United States

Army Engineer District, Honolulu, Sep 78, for techniques which may be applicable.

- (5) “Coral” means the calcareous skeletons secreted in or by the tissues of various marine coelenterates, including all varieties hermatypic coral, coralline structures, and precious corals.
- (6) “Coral reef” means a structure which may or may not be adjacent to the shoreline, formed and bounded by the gradual deposition of and calcareous secretions of coralline materials.
- (7) “Critical habitat area” means a land or water area where sustaining the natural characteristics is important or essential to the productivity of plant and animal species, especially those that are endangered or threatened.
- (8) “Erosion” means the result of natural processes by which surface materials are worn away, loosened, or dissolved, and transported off site. Areas of shoreline erosion are indicated in the “American Samoa Shoreline Inventory” by the U.S. Army Engineer District, Honolulu.
- (9) “Fa’a Samoa” means the traditional Samoan way of life.
- (10) “Feasible” means capable of being accomplished in a reasonable period of time taking into account economic, social, technological, and environmental factors.
- (11) “Flooding” means the inundation of areas adjacent to a stream, bay, or coast which is caused by storm runoff, storm surge, or tsunami.
- (12) “Floodplain” means the area adjoining a stream, bay, or coast that is subject to flooding.
- (13) “Impact” means the consequences of a course of action or effect of a plan or permit decision which result in modification to existing conditions.
- (14) “Maintain” means to support, keep, and continue in an existing state or condition.
- (15) “Major facilities” includes water treatment plants, roads, highways, seaports, airports, aids to navigation, power production, distribution and transmission facilities, (ASAC 4-89) major recreation areas, national defense installations,

solid-waste disposal areas and facilities, national aerospace facilities, and water supply systems.

- (15A) “Major project” means a proposed project which DPO/ASCMP determines may cause a significant adverse impact on the American Samoa coastal zones. Specific criteria for such projects shall be arrived at in consultation with the review agencies and made available to the public at DPO. Examples of such “major” projects include, but are not limited to, projects which: (a) create a new or relocate an existing discharge to surface or ground waters; (b) result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters; (c) is known, or is expected, to have a significant affect on the quality of the human environment, either individually or cumulatively over time, or in conjunction with other federal, territorial, village, or private actions; (d) right be associated with significant public controversy; (e) is considered to be a major energy-related facility, waste-water treatment facility, pipeline, surface water control project, airport development, or harbor structure; (f) includes landfills, disposal of dredged materials, mining activities, quarries, basalt extraction, or incinerator projects; (g) includes dredging and filling of marine or fresh waters, point source discharge of water or air pollutants, shoreline modification, ocean dumping, or artificial reef construction; (h) has potential for significant adverse affect on submerged lands, reef systems, groundwater recharge areas, cultural areas, historic or archaeological sites and properties, designated Special Management Areas, pristine ecotypes, mangroves, wetlands, beaches, areas of scientific interest, recreational areas, lowland and montane forests, and endangered or threatened species habitat; (i) will include major recreational developments and major urban or government-sponsored developments; (j) involves major repair or construction of highways or other infrastructure development; (k) develops largescale commercial agriculture or mariculture facilities or includes silviculture or timber operations; (l) has the potential to negatively affect coastal resources and also

requires a federal license, permit or other authorization from a federal government regulatory agency; (m) may cause underground injection of hazardous wastes; of fluids used for extraction of minerals or oil; or of certain other fluids with potential to contaminate ground water; or (n) upon review of substantial evidence, a majority of the review agencies agree has the potential to significantly impact or disrupt coastal resources.

- (16) “Mariculture” means the culture or commercial production of marine plants, or animals for research or food production.
- (16A) “Minor project” means any proposed project which does not fit the general guidelines for a “major” project as described above, and which the ASCMP manager determines to most likely have a minimum adverse impact on the American Samoa coastal zone. Specific criteria for such projects shall be made available to the public at DPO.
- (17) “Near shore waters” means those waters within 1,500 feet of the shoreline.
- (18) “Permit” means a certificate, license, approval, or similar form of permission required by law.
- (19) “Permit application evaluation factors”. See pages 1-8 to 1-18 of “Permit Processing Guidelines to Control the Cumulative Effects of Shoreline Development in Pago Pago Harbor, Tutuila Island, American Samoa”, U.S. Army Engineer District, Honolulu, Jul 78.
- (20) “Public need”. In assessing whether there is a public need, one must look at the basic service provided and to whom the service is provided. The basic purpose must be one for which a village, group of villages, territory, or the United States has a demonstrated need.
- (20A) “Review Agencies” means those agencies and instrumentalities of the American Samoan Government that are charged with the responsibility of regular and routine participation in the land use permit process under their respective jurisdiction and permitting authority. It shall include at least the following agencies: office of development planning,

department of public works, environmental quality commission/ASEPA, department of parks and recreation, department of agriculture, zoning board, department of health, office of Samoan Affairs, and the office of marine and wildlife resources.

- (21) “Saltwater intrusion” means the subsurface movement of waters of higher salt concentrations; e.g., seawater, into basal aquifers.
- (22) “Shoreline” means the boundary line between a body of water and the land, measured on tidal waters at mean high water and nontidal waterways at the ordinary high-water mark.
- (23) “Significantly disrupt” means an alteration which would impair the longterm function or stability of the area; for example, reduction in species diversity and abundance or modification to community composition.
- (24) “Sound agricultural practices”; See Appendix D of “Wastewater Management Data Evaluation Study for American Samoa”, United States Army Engineer District, Honolulu, Sep 78, for practices that may be applicable.
- (25) “Stream” means a natural pathway for surface water drainage or runoff, often intermittent in flow, and usually characterized by unique riparian plant and animal communities.
- (26) “Sustained yield” means a resource-management concept used to achieve a balance between the rates of resource consumption and renewal, recruitment or productivity.
- (27) “Traditional Samoan uses” means low-intensity or low-density traditional subsistence or communal uses and facilities.
- (28) “Water-dependent” means a use, activity, or development which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body to function at all.
- (29) “Water-related” means a use, activity, or development which is not directly dependent upon access to a water body, but which provides

a good or service that is directly associated with a water-dependent use.

(30) “Watershed” means a distinct area bordered by features of higher elevations that is usually accented by surface drainages.

(31) “Wetland” means those land areas where excess water is the dominant factor determining the nature of soils and the types of plant and animal communities. Wetland soils retain sufficient moisture to support aquatic plants. Wetlands generally include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries, bogs, and other similar areas.

History: Rule 12-88, eff 4 Dec 88. § 1.

TITLE 26 – CHAPTER 02 – COASTAL MANAGEMENT

Sections:

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- 26.0202 Purpose
- 26.0203 Construction
- 26.0204 Definitions
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26.0201 Adoption Authority

The American Samoa Coastal Management Program administrative code is adopted pursuant to authority granted the Department of Commerce under Public Law 21-35, the American Samoa Coastal Management Act of 1990, ASCA §§ 24.0501 et. seq.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0202 Purpose

The provisions of this chapter govern the administration of the American Samoa Coastal Management Program. The Act mandates the establishment of a system of environmental review, along with economic and technical considerations, at the territorial level intended to ensure that environmental concerns are given appropriate consideration in the land use decision-making process. The provisions of this chapter establish a consolidated land use permitting process, known as the Project Notification and Review System, including development standards, procedures for the designation, planning and management of Special Management Areas, procedures for environmental assessments, and procedures for determination of federal consistency. The provisions of this chapter are not intended to negate or otherwise limit the authority of any agency of the Territory, provided that actions by agencies shall be consistent with the provisions contained herein. The provisions of this chapter are consistent with the Coastal Zone Management Act of 1972, as amended, 16 USC §§ 1451 et. seq.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0203 Construction

The provisions of this chapter shall be construed to secure the just and efficient administration of the Act. In any conflict between a general provision and a specific provision, the specific shall control over the general.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0204 Definitions

The following definitions shall apply:

- A. Act means the American Samoa Coastal Management Act of 1990, ASCA §§ 24.0501 et. seq.
- B. Agency means any executive, autonomous, or legislative board, department, office, commission, committee, or other instrumentality created by the Revised Constitution of American Samoa of 1967, the American Samoa Code Annotated, the American Samoa Administrative Code, or by executive order of the Governor.
- C. Applicant means any person or agency of the territorial or federal government who, pursuant to the Act and provisions of this chapter, files an application for a land use permit.
- D. Best management practices means economically achievable measures through the application of the best available practices, technologies, processes, siting criteria, operating methods, or other alternatives that will reduce, limit, or improve developmental impacts within the coastal zone.
- E. Board means the Project Notification and Review System Board.
- F. Chair means the Chair of the Project Notification and Review System Board.
- G. Coastal resource means the land, air, water, minerals, flora, fauna, and objects of historic or aesthetic significance of the Territorial coastal zone. Coastal resources include, but are not limited to, submerged lands, reef systems, groundwater recharge areas, archaeological/cultural/historic resource sites and properties, Special Management Areas, pristine ecosystems, mangroves, wetlands, beaches, areas of scientific interest, recreational areas, undisturbed native vegetation, and critical habitat.
- H. Container means a single rigid, intermodal dry cargo, insulated refrigerated, flat rack, liquid tank, or open door container, demountable, without wheels or chassis attached, furnished or approved by ocean carriers for transportation of commodities aboard ocean going vessels. Modules are generally known as 20-footers and 40-footers, even though they may be less than twenty (20) or forty (40) feet in length. Sean vans (types used for household goods) or other similar shipping container or cargo boxes are excluded from this definition.
- I. Days mean normal calendar days, including holidays, unless otherwise indicated “business days.”
- J. Director means the Director of the Department of Commerce or his designee.
- K. Environment means humanity’s surroundings, inclusive of all the physical, economic, and social conditions that exist within the area affected by a proposed action, including land, human, and animal communities, air, water, minerals, flora, fauna, and objects of historic or aesthetic significance.
- L. Feasible means capable of being accomplished in a reasonable period of time, taking into account economic, social, technological, and environmental factors. Use of this word includes, but is not limited to, the concept of reasonableness and likelihood of success in achieving the project goal or purpose.
- M. Feasible alternatives means alternatives to the proposed project, use or activity, and applies both to locations or sites, to methods of design or construction, and includes a “no action” alternative.
- N. Federal government means the government of the United States of America.
- O. Manager means the American Samoa Coastal Management Program Manager who is responsible for the overall implementation and

administration of the American Samoa Coastal Management Program.

- P. Matai means the titled head of a Samoan extended family, the Sa'o.
- Q. Person means any individual, partnership, firm, association, trust, estate, private corporation, an agency of the territorial or federal government or other legal entity.
- R. Public need means a need of the people of the Territory as opposed to the needs of an individual or group of individuals. In assessing whether there is a public need, one must look at the basic service provided and to whom the service is provided. The basic purpose must be one for which a village, group of villages, county, district, or the Territory, has a demonstrated need.
- S. Pulenu'u means the official representing central government in a village; the village mayor.
- T. Sami means shoreline and refers directionally towards the ocean or away from the mountains.
- U. Sustained yield means resource management used to achieve a balance between the rates of renewable resource consumption and renewal, recruitment, or productivity.
- V. Territory means the United States Territory of American Samoa.
- W. Water-dependent means a project, use or action, which can be carried out only on, in, or adjacent to water areas because it requires access to water.
- X. Water-related means a project, use or action which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with a water-dependent use.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0205 Interagency Cooperation

- A. All territorial agencies and their employees shall conform to the provisions of this chapter. These agencies shall ensure that their activities, or any possible indirect result of their activities, shall

further the purposes, objectives and policies of the Act.

- B. The Director shall schedule periodic meetings or workshops with the Board member agencies in order to ensure that practices and procedures under the provisions of this chapter are fully understood to maximize coordination, thoroughness, and attainment of the purposes, objectives and policies of the Act and the provisions of this chapter.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0206 Establishment of Project Notification and Review System: Jurisdiction, Members, Conduct of Meeting, Voting

- A. There is established and consolidated within the Department of Commerce a streamlined land use permit system that integrates the permitting requirements of each of the territorial agencies concerned with environmental management and shall be known as the Project Notification and Review System.
- B. The jurisdiction of the Project Notification and Review System shall be the coastal zone of American Samoa.
 - 1. Coastal zone or coastal zone area means the coastal waters, including the waters therein and thereunder, in proximity to the shorelines of the Territory, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The coastal zone extends inland from the shorelines to the extent necessary to control the shore, the use of which has a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the federal government, its officers or agents, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise.
 - 2. The American Samoa coastal zone includes the entire island of Tutuila, the Manu'a Islands, Aunu'u Island, Rose Island, and Swains Island in the Territory of American

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Samoa and all coastal waters and submerged lands for a distance of three (3) nautical miles seaward in all directions therefrom.

C. Members of the Project Notification and Review System:

1. The Project Notification and Review System shall be administered by the Project Notification and Review System Board.
2. Members of the Board shall be the directors or their designee of the Territory agencies which have permitting or regulatory authority on land use development and environmental matters in the coastal zone.
3. The Board includes the following:
 - a. Department of Commerce; American Samoa Coastal Management Programs;
 - b. American Samoa Environmental Protection Agency;
 - c. American Samoa Historic Preservation Office;
 - d. American Samoa Power Authority;
 - e. Department of Health;
 - f. Department of Marine and Wildlife Resources;
 - g. Department of Parks and Recreation; and
 - h. Department of Public Works.
4. The Director shall appoint an ex-officio Chair who shall chair regular and special meetings and public hearing, but who shall not vote, provided that if the Board is evenly divided, then the Chair shall cast the deciding vote.
5. The American Samoa Coastal Management Program shall provide support staff for the Board and all necessary supplies.

D. Meetings

1. The Board shall convene regular meetings or special meetings at times and places as determined by the Chair. Minutes of all meetings shall be kept and shall be reviewed and approved by the Board and made available to the public upon request. Board proceedings shall be informal and presided over by the Chair. The presence of five (5) members shall constitute a quorum.
 - a. Regular meetings shall be scheduled for the first and third Wednesday of each month, unless the Director determines that rescheduling is appropriate due to a public holiday or a government function.
 - b. Special meetings may be scheduled by the Director upon receiving a written request from a land use permit applicant that the Board's review of a project, use or activity is necessary rather than at the regular meeting dates. All procedures and policies shall be applied to special meetings.
2. All meetings of the Board shall be open to the public and public notice shall be given. The Board may adjourn and reconvene in executive session for the purpose of consulting with staff regarding legal, technical, and personnel matters. Minutes of the executive session are confidential and shall be stored in such a manner to protect confidentiality.

E. Voting

1. All sections by the Board shall be by vote and publicly cast.
2. Each member agency shall have one vote.
3. Unless otherwise provided by the provisions of this chapter all actions taken by the Board shall be by majority vote of those present.
4. All Board members participating in decisions regarding land use permits shall do so in a fair and impartial manner.
 - a. Board members shall not participate in decisions on land use permit where there

exists and appearance or an actual conflict of interest.

- b. If any member agency of the Board submits a land use permit application, that member agency shall be recused from voting on the proposed project.
- c. A representative of a Board member agency who is recused hereunder shall be counted for purposes of determining a quorum.

F. Pursuant to ASCA § 24.0506, any agency of the Territory may be called upon by the Board to advise on projects relevant to their particular authority or jurisdiction.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0207 Land Use Permit Application Procedures, Fees, and Penalties

- A. Applicability. All persons proposing to undertake any action which may cause or threaten an adverse impact to coastal resources shall apply for a land use permit, except where specifically exempted by law.
 - 1. A land use permit means a written authorization signed by the Director on an approved form that authorizes a specified party to undertake a specified project, use or action.
 - 2. A land use permit application is necessary for all physical project work, including, but not limited to, site preparation, filling, grading, dredging, excavation, and erection or siting of structures.
- B. Burden on applicant. In all cases, the burden is on the applicant to obtain the proper permits and signatures required for the project prior to commencement of the work. Federal permits may also be necessary for certain projects. The American Samoa Coastal Management Program will make reasonable attempts to assist a land use permit applicant with federal permit application requirements; however obtaining federal and territorial permits and approvals, such as from the Zoning Board and the Territorial Planning Commission, remains the responsibility of the applicant.

C. Preapplication consultation. A preapplication consultation may be held between prospective land use permit applicants and the American Samoa Coastal Management Program to determine the likelihood of the project, use or action being proposed having an adverse impact on coastal resources requiring a land use permit. If so determined, the American Samoa Coastal Management Program shall make a preliminary determination whether the project constitutes a major or minor project and shall assist the applicant in identifying the information required to submit a land use permit application. The American Samoa Coastal Management Program shall also assist the applicant in understanding the applicable provisions and procedures of the Act and the provisions of this chapter and shall assist the applicant in scheduling any necessary subsequent meetings.

D. Scoping meetings for major projects. For those projects, uses or activities of sufficient complexity that benefits might be derived from preliminary assessment by several agencies, a scoping meeting of the Board, and other invited agency and members of the public, may be requested by the prospective applicant or any member of the Board. Such scoping meetings shall be solely for the purpose of discussing conceptually the proposed project, in order to obtain preliminary feedback as to the type and degree of impact analysis that may be required, and to determine, if possible, any other local and federal permits that may be required.

E. When to file. Land use permit application forms shall be made available at the Department of Commerce. The completed land use permit application shall be filed with the Department of Commerce for review at any time during normal business hours.

- F. Application package.
 - 1. The land use permit application shall be accompanied by the following documents:
 - a. a vicinity map;
 - b. a fully dimensioned site plan that shall include topographic data at a scale appropriate to discern the principal

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- features of the site, a functional floor plan, a container plan, and a parking plan;
 - c. an erosion control plan necessary to reduce non-point source pollution that includes existing contours and proposed final grading of the site, existing and proposed drainage, a description of adjacent and down slope sites, and a narrative of how the proposed drainage plan will impact those sites;
 - d. a federal consistency certification (or if a federal agency, a consistency determination) and an environmental assessment, if applicable; and
 - e. any other supporting documentation that may be required by law or by the provisions of the chapter.
2. All information submitted with the application or at any other time in the review process shall be public information, provided that certain proprietary information, not material to a review of project compliance, may be withheld if requested in writing to the Chair and such request is approved.
- G. Information requirements. The land use permit application shall contain at a minimum the following information:
- 1. applicant's name, mailing address, and telephone number;
 - 2. applicant's representative, if any, and architect, engineer or contractor, if any, including their mailing address and telephone number;
 - 3. applicant's interest in the project site, e.g., owner, lessee;
 - 4. name of the landowner or the matai for the project site;
 - 5. signature of the matai, if communal land;
 - 6. signature of the pulenu'u, if communal land;
 - 7. signature of the secretary of Samoan Affairs if, communal land;
 - 8. signature of the Governor, if government land;
 - 9. copy of the legal title to the land, if privately owned land;
 - 10. copy of lease or license agreement, if title is held under such agreement;
 - 11. project name and description;
 - 12. concise written narrative describing the project and its function;
 - 13. site description and location;
 - 14. construction methods, including dredge, fill or excavation requirements, if any;
 - (i) Less than \$10,000 \$10
 - (ii) \$10,000 to \$29,999 \$25
 - (iii) \$30,000 to \$49,999 \$50
 - (iv) \$50,000 to \$249,999 \$150
 - (v) \$250,000 to \$499,999 \$300
 - (vi) \$500,000 to \$1,000,000 \$500
 - (vii) For each additional \$1,000,000 increment or portion thereof, there shall be assessed an additional fee of \$500.
 - 15. total project cost for all projects and, if federal funds are involved, funding source;
 - 16. distance of project from the shoreline, if project is located within two hundred feet (200') of the shoreline;
 - 17. current and projected utility requirements and connections, including streets, sewer, water, electricity, fuel (including storage on site) and all existing and proposed line locations, including size and engineering requirements;
 - 18. statement of compliance with the policy objectives of the American Samoa Coastal Management Program
 - 19. copies of all correspondence on the project with the Board member agencies or any other governmental agency; and
 - 20. copies of all federal permits or applications or documentation from the appropriate agency showing that the project is being

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carried out pursuant to an existing federal permit, license, or grant.

- (iii) \$30,000 to \$49,999 \$100
- (iv) \$50,000 to \$249,999 \$300
- (v) \$250,000 to \$499,999 \$600
- (vi) \$500,000 to \$1,000,000 \$1,000
- (vii) For each additional \$1,000,000 increment or portion thereof, there shall be assessed an additional penalty of \$1,000.

H. Declaration of applicant. A land use permit application shall include a signed declaration by the applicant that the information supplied in the land use permit application, including all exhibits and attachments, is true and correct, under penalty of law.

I. Administrative fees and penalties. At the time of filing a land use permit application, payment of an administrative fee is required. The “Cost of Project” shall be determined in accordance with the Uniform Building Code as adopted in the Territory, and shall include all improvements associated with the project. There shall be no administrative fee for government agency-funded projects or projects of not-for-profit U.S. Internal Revenue Code § 501(c)(3) corporations; however, penalties shall be assessed for government and not-for-profit projects that commence prior to the Director issuing a land use permit.

b. The Board shall not issue a land use permit until all administrative fees, after-the-fact penalties, stop work orders, or citations, as consistent with this chapter, are resolved.

J. In the case of work commenced without a land use permit, should the Board determine that the applicant is not eligible for a land use permit, the applicant shall restore the site to its pre-work condition.

1. Administrative fees shall be set in accordance with the following fee schedule:

- 1. If the applicant refuses or is unable to take the required remedial action, the American Samoa Government may perform the necessary remedial action, and
- 2. the applicant shall be financially responsible for all costs associated with the necessary remedial action to restore the site to its pre-work condition.

- a. Exempt and grandfathered projects requesting certification for utility connection: no administrative fee.
- b. Minor and major projects: fees shall be determined by the actual cost of the project or the anticipated value of the project, whichever is greater.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0208 Types of Activities; Grandfathered, Exempt, Minor and Major Projects

2. After-the-fact penalty for filing a land use permit application after work commenced.

A. Grandfathered use.

a. In addition to the land use permit fee and other penalties provided by law or the provisions of this chapter, a penalty of \$100 or 200% of the land use permit fee, whichever is greater, shall be assessed for a project for which physical work has been commenced prior to receiving a valid land use permit.

- 1. Grandfathered use means any non-conforming structure that was a previously lawful project, use or activity existing as of May 29, 1980, the date that the Act was enacted, but that is not in conformity with the current provisions.
- 2. Grandfathered uses may be continued, provided that any grandfathered use or building shall conform with the provisions of this chapter, if the project, use or activity:
 - a. Changes to another use.

- (i) Less than \$10,000 \$100
- (ii) \$10,000 to \$29,999 \$100

- b. Resumes after discontinuance for a period of one year or more.
 - c. Alters or extends the footprint of the structure.
3. The American Samoa Coastal Management Program shall certify that the structure is grandfathered under the provisions of this chapter for utility connection.
- B. Exempt activity.
1. Exempt activities means projects which do not adversely impact coastal resources, and thus shall not require a land use permit.
 2. Exempt activities include:
 - a. constructing and maintaining a Samoan umu or cook house, or a faleo’o or small guest house;
 - b. maintaining or repairing an existing single family home or other structure, that does not change the footprint, increase dimensions, or change the use of the structure;
 - c. connecting utilities, including water, sewer, and electricity, provided that a valid land use permit or a grandfather certificate exists for the structure for which the connection is requested;
 - d. siting intermodal containers or freezer containers for the purposes of loading and off-loading which does not exceed thirty (30) days; provided that if siting exceeds thirty (30) days, placement of containers shall be classified as a major project;
 - e. landscaping, including clearing and grading, that does not exceed ten (10) cubic yards of topsoil, provided that cider shall not be used;
 - f. erecting non-permanent structures for political campaign, public service or fund raising activities and government sponsored cultural celebrations, events or activities that do not exceed seventy-two [72] hours;
 - g. traditional Samoan uses which means low-intensity or low-density traditional subsistence or communal uses and practices, which use traditional methods and materials. Such uses may not surpass the sustained yield of any given resource; and
 - h. subsistence taking and gathering of animals, fish, sea creatures or vegetation historically used in the Samoan islands by traditional methods for the personal use of the immediate family; except that:
 - (1) animal husbandry, including piggeries, shall be classified as a major project;
 - (2) subsistence hunting, fishing, and agricultural activities do not include commercial, for profit or for barter activities.
 - (3) subsistence activities, while exempt from the need for a land use permit, are not exempt from compliance with other federal or territorial laws or regulations.
 3. If a person assumes that the project, use or activity is exempt, and the American Samoa Coastal Management Program later determines that the project is not exempt, but rather that the project, use or activity is a minor or major project, the person is responsible for administrative fees, after-the-fact penalties for building without a valid land use permit, and any possible citations that may have been issued as consistent with this chapter.
- C. Minor projects.
1. Minor projects means any project, use or action that may have an adverse impact on coastal resources, particularly when viewed within the context of the cumulative or secondary impacts; provided that, where the location of project has the potential for significant adverse impacts on coastal

resources, the project, use or activity shall be deemed a major project.

2. Minor projects include:

- a. constructing a single family home;
- b. constructing Samoan cultural facilities including: fautasi boat houses, faletalimalo or guest house, and fale leoleo or guardhouses;
- c. constructing structures or extensions to existing non-commercial structures that do not exceed one hundred twenty (120) square feet; and
- d. erecting non-permanent structures that shall not exceed thirty (30) days, provided that this section shall not apply to the placement of intermodal containers or freezer containers.

D. Major projects.

1. Major projects means a proposed project, use or action which is likely to have significant adverse impact on coastal resources.

2. Major projects include, but are not limited to:

- a. creating, expanding, or extending any commercial activity;
- b. siting permanently or continually replacing intermodal containers or freezer container, including enclosing, connecting utilities, or any other permanent action which exceed thirty (30) days;
- c. creating a new, or relocating an existing, discharge of pollutants to ocean, surface, or ground waters;
- d. substantially increasing the volume of discharge or the loading of pollutants, including air pollution, from an existing source or from new facilities to receiving waters;

e. significantly impacting the quality of the human environment, either individually or cumulatively;

f. siting major facilities;

g. landfilling, excavating, disposing of dredged materials, mining, quarrying;

h. incinerating private, municipal or medicinal wastes;

i. dredging or filling marine or fresh waters, point source discharging of water or air pollutants, ocean dumping, or constructing artificial reefs;

j. establishing or expanding agriculture or livestock facilities, including:

(1) silviculture or timber operations;

(2) aquaculture facilities, which means the culture or commercial production of freshwater or marine plants or animals for research or food production; and

(3) subsistence animal husbandry, including piggeries.

k. contaminating ground water, including underground injection of hazardous wastes or fluids used for extraction of minerals or oil, or of certain other fluids with potential to contaminate ground water;

l. projects, uses or activities under the direct or indirect jurisdiction of a federal agency, including:

(1) those carried out by or on behalf of the agency;

(2) those carried out with federal financial assistance;

(3) those requiring a federal permit, license, or approval; and

(4) those subject to territorial or local regulation administered pursuant to a delegation or approval by a federal agency.

- m. locating any project use or action within or adjacent to a Special Management Area, or any other designated resource management area of the Territory, including but not limited to the following:
 - (1) Fagatele Bay National Marine Sanctuary;
 - (2) American Samoa Tia Seu Lupe Monument;
 - (3) National Park of American Samoa; and
 - (4) Ofu-Vaota Marine Park.
 - n. project, uses or activities the cost of which is greater than \$250,000;
 - o. project, uses or activities that have the potential for significant adverse impacts on floodplains, coastal hazards areas or erosion prone sites; or
 - p. in the view of any single agency member of the Board, are found to have the potential for a significant adverse impact on coastal resources.
- 3. Once all necessary materials are submitted by the applicant, the Manager shall: make a determination of whether the project is a major or minor project; make a determination of acceptance for review; and notify the applicant.
- B. Public notice.
 - 1. Minor projects. Upon acceptance for review the American Samoa Coastal Management Program shall post notice of the application at the Department of Commerce. The notice shall remain posted for three (3) business days. No action on the permit can be taken during the notice period.
 - 2. Major projects and project requesting federal consistency. Upon acceptance for review the American Samoa Coastal Management Program shall post notice in the Department of Commerce which shall remain posted until a final decision has been made. Additionally, the notice shall be published in a newspaper of general circulation in the Territory, at least one (1) week prior to the Board's review of any project, use or activity. The notice shall contain: the status of the project review; a statement that a record of the project proposal is available for public inspection; a statement that public comments will be considered; and information on the procedures by which the public may request a public hearing, and the date, time, and location of the Board's review of the land use permit application under consideration. The applicant shall be given at least seven (7) days written notice of the meeting.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0209 Review of Land Use Permit Applications

- A. Acceptance for review. Acceptance for review means a formal determination that a document is sufficiently complete to commence its review.
 - 1. Upon filing the application with the Department of Commerce, the Manager shall ensure that the application is complete, that the vicinity map and site plan are acceptable, and that all other necessary documents are attached.
 - 2. If any additional information is required, the applicant will be notified; provided that, if the required information is not provided by the applicant within ninety (90) days of the notification, the land use permit application shall be considered void.
- C. Site visit.
 - 1. The American Samoa Coastal Management Program shall conduct a site visit and prepare a report prior to taking action on any land use permit application. The report shall be maintained as part of the application record.
 - 2. For major projects the American Samoa Coastal Management Program shall coordinate a site visit for the Board and

prepare a report prior to taking action on my land use permit application.

D. Review standards.

1. The proposed project shall be reviewed in accordance with the Act and the provisions of this chapter.
2. The issuance of an approved land use permit does not relieve an applicant from complying with any other required territorial or federal permits, licenses, clearances, or approvals which may be required by law or regulation.
3. Reclassification of a project from minor to major. Any Board member may reclassify a minor project to a major project. The justification for the reclassification shall be stated in writing and added to the applicant's file. Upon reclassification, all provisions of this chapter applicable to major projects shall apply.

E. Minor project review.

1. Minor projects shall be reviewed by the American Samoa Coastal Management Program who may consult with diverse government agencies for technical assistance.
2. A decision shall be issued not less than five (5) business days from the close of the published notice, provided that any Board member has not reclassified the project, use or activity as a major project.

F. Major project review.

1. Major projects shall be reviewed, evaluated, and a decision made by the Board at a regular or special meeting.
2. A decision on a land use permit application for a major project shall be issued within forty-five (45) days from acceptance for review.
 - a. The forty-five (45) days review period shall be suspended if:

- (1) The applicant or a designee fails to appear at a regular meeting, special meeting or public hearing on three occasions without giving twenty-four (24) hours notice requesting a continuance, the Board shall void the land use permit application;

- (2) Additional information is requested by any Board member agency in order to properly evaluate the project, provided that if the required information is not provided by the applicant within ninety (90) days of the request, the Board shall void the land use permit application:

- (3) A public hearing is held; or

- (4) Any member of the Board determines that an environmental assessment is necessary to properly evaluate the project.

b. The forty-five (45) day period for review shall commence upon receipt of the additional information required, the date the public hearing is concluded, or the acceptance by the Board of an environmental assessment.

3. Public testimony shall be heard by the Board when the land use permit application is scheduled to be heard, as published in the public notice, and all public testimony shall become part of the land use permit applicant's permanent file.

4. Public hearings.

a. A public hearing on a major project shall be held in or near the village in which the project, use or activity is located, provided that a request is made in writing to the American Samoa Coastal Management Program by:

- (1) any Board member agency;

- (2) any other territorial or federal agency;
 - (3) any publicly funded organization representing no less than twenty-five (25) members;
 - (4) any landowner or occupier within two hundred (200) feet of the project site;
 - (5) no less than twenty-five (25) members of the public; or
 - (6) the project includes the construction of major facilities.
- b. A public hearing shall be called as soon as practicable after the determination is made to hold a public hearing, but in no event shall a public hearing be held with less than fourteen (14) days notice posted at the Department of Commerce, and published at least once a week for two (2) consecutive weeks in a newspaper of general circulation in the Territory.
 - c. The Board may exempt from the public hearing requirements any major project which is funded by federal grants that has had a public hearing equivalent to the environmental review process of the Project Notification Review System, as provided by this chapter, as part of the grant process. In such case the record of the prior public hearing shall be filed with the Board.
5. Written technical findings shall be prepared by each Board member with jurisdiction.
- a. If additional permits e.g., water quality certification, are required, those Board members with jurisdiction shall comment on the requirements.
 - b. If appropriate, project modifications, alternatives or mitigating conditions shall be proposed.
 - c. If a project is found by a Board member not to be in compliance, or capable of complying, with the requirements of the board member's agency, a written basis for such determination shall be provided to the Board.
- d. Technical findings and recommendations of the Board and public comments shall be maintained as a part of the record.
6. Upon review of the entire record, the Board shall determine whether the proposed project, use or action complies, or reasonably can be conditioned to comply, with the Act, the provisions of this chapter, and with the respective jurisdiction of each member of the Board.
- a. An approved or conditional land use permit requires a unanimous vote of the Board members present.
 - b. The Board's decision shall include written findings of fact and conclusions of law.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0210 Land Use Permits; Issuance, Duration, and Contents

- A. Issuance and duration
- 1. Upon a determination by the Manager in the case of a minor project, or recommendation of the Board in the case of a major project, the Director shall approve, approve with conditions, or deny the land use permit application.
 - 2. Physical development of the project which is approved under a land use permit shall commence within one (1) year of the date the land use permit is issued, and shall be completed within two (2) years of the date of issuance; except:
 - a. If physical development of the project is not commenced within one (1) year of the date the land use permit is issued, the land use permit shall be voidable by the Board;

- b. If work is discontinued for a period of one (1) year or more, that land use permit is considered abandoned and a new land use permit application shall be required; and
 - c. If the project is not completed within two (2) years of the date the land use permit is issued, the Board may extend the permit duration upon request by the applicant within six (6) months of the permit expiration day.
3. The land use permit shall be posted at the site prior to commencing physical development and visible to the public throughout the duration of the project.

B. Contents

- 1. The land use permit shall be issued on a standard form prepared by the Department of Commerce and shall contain at a minimum the following information:
 - 2. purpose and scope of the land use permit;
 - 3. all conditions imposed by the Board;
 - a. All land use permit conditions shall be incorporated into the final design plans of a land use permit.
 - b. The land use permit shall be submitted to each Board member agency having jurisdiction over the conditions imposed who shall be responsible for the enforcement of the conditions.
 - c. A performance bond or cash equivalent may be required by the Board if a failure to adhere to the terms and conditions of a land use permit may result in or threaten damage to coastal resources, including beyond the boundaries of the project site.
 - d. All conditions imposed on a land use permit shall be for the term of the permit, unless otherwise stated.
- 4. duration of the land use permit;

- 5. notice that the American Samoa Coastal Management Program or member agencies of the Board have legal authority, as provided by this chapter, to periodically inspect the project; and
- 6. notice that any deviation from the purpose and scope of the land use permit, or any violation of the conditions of the permit, shall subject the permittee to financial penalties and/or revocation of the permit as provided by this chapter.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0211 Land Use Permits: Amendment

- A. An amendment to a land use permit shall be required of all projects before significant alterations or expansions occur.
- B. The permittee shall submit a revised land use permit application for consideration of the Board as consistent with the provisions of this chapter.
- C. Alterations and expansions requiring an amended land use permit include, but are not limited to:
 - 1. a project change which increases the project cost by 25% or more;
 - 2. a project change which increases the square footage of the project by 10% or more;
 - 3. a modification or deviation of the site plan which causes new or increased adverse impacts on coastal resources; or
 - 4. a change in the proposed use.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0212 State of Emergency and Emergency Land Use Permits

- A. Upon a declaration of a state of emergency by the Governor, due to a natural catastrophe or other act of God, or that the provision of emergency services or repairs is necessary for the public good, including the preservation of human life and property, an emergency land use permit may be granted.

B. An applicant may seek an emergency land use permit by application to the Director under the following procedures:

1. The Director shall issue an emergency land use permit in writing to the agency providing the emergency services or repairs, accompanied by written findings of fact and conclusions of law.
2. The emergency land use permit shall allow the stated activities to occur for a period not to exceed ninety (90) days.
3. Notice shall be published at least twice post hoc in a newspaper of general circulation in the Territory, specifying the duration of the emergency land use permit and citing the reasons for the emergency land use permit.
4. An emergency land use permit does not relieve the emergency land use permittee from compliance with all other applicable territorial and federal laws and regulations.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0213 Monitoring and Regulation, Authority and Duty

- A. The Manager, or any Board member agency, shall have the authority and duty to investigate, monitor and regulate any and all projects, uses and activities that require a land use permit pursuant to the provisions of this chapter.
- B. An application for a land use permit shall constitute consent by the applicant that representatives of the American Samoa Coastal Management Program, or any Board member agency, may enter the site of a proposed project, use or action, at any reasonable time, for the purpose of inspecting the site, before or after issuance of a land use permit.
- C. If the Manager or any Board member agency, has reasonable cause to believe a criminal offense has been committed under the Act, the action shall promptly be reported to the Office of the Attorney General. These provisions do not limit the authority of any Board member to report offenses directly to the Attorney General.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0214 Stop Work Orders

- A. The Manager may issue a stop work order, upon finding reasonable cause to believe that a project, use or action violates one or more provisions of the Act, the provisions of this chapter or the terms and conditions of a land use permit or that an imminent threat exists of adverse impact.
- B. The stop work order shall specify:
 1. the provisions of law or the conditions of the land use permit alleged to be violated and a statement of facts constituting the violation; and
 2. the corrective measures, if any, necessary to satisfy compliance with the Act and the provisions of this chapter, including but not limited to, immediate removal of any fill, structure, or other material, and provide for a time period in which compliance shall be effected; and
 3. that sanctions specified by the Act and the provisions of this chapter may be imposed, unless the corrective measures are taken in the time period provided, and advise that the stop work order may be contested as provided by this section. At the discretion of the Manager, the stop work order may authorize specific mitigation work to be performed.
- C. The stop work order shall be personally served upon the land use permittee, if any, or the person in charge at the site of the project, use or action, and shall be posted at the site.
 1. Copies of the stop work order shall be sent to the Building Division, Department of Public Works.
 2. It is a violation of the provisions of this chapter to remove or otherwise deface a posted stop work order.
- D. A stop work order may be contested by its recipient upon giving notice, in writing, to the Manager within five (5) days of service of the stop work order.

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1. If a recipient of a stop work order submits a land use permit application within ten (10) days of the stop work order, the land use permit shall be reviewed and considered by the Board pursuant to the same procedures applicable to a major project.
 2. In the event a stop work order is contested, the Manager shall schedule a hearing before the Board at its next regularly scheduled meeting and notify the contestant at least twenty-four (24) hours before the hearing. The Board may approve, approve with conditions, or overturn the stop work order by a unanimous vote. A decision shall be rendered within thirty (30) days of the hearing and be accompanied by findings of fact and conclusions of law.
- E. In the event the recipient of a stop work order does not comply with the terms of the stop work order or the decision of the Board, if appealed, the matter shall be referred to the Office of the Attorney General. The Attorney General is authorized to petition the High Court of American Samoa for injunctive relief to obtain compliance.
- F. The stop work order shall remain in effect, except for mitigative work authorized by the Manager, if a citation has been issued, until the citation is adjudicated and all fines and costs paid.
3. A person shall not violate the provisions of this chapter on Special Management Areas;
 4. A person shall not violate the provisions of this chapter on wetlands, including, but not limited to:
 - a. filling wetlands;
 - b. siting a project, use or activity within the wetlands setback area;
 - c. siting a project, use or activity within the stream setback area; and
 - d. hardening of stream banks.
 5. Any other violation of this chapter.
- B. Service of process for citations
1. As provided in ASCA § 24.0509, upon finding reasonable cause to believe that a project, use or action violates one or more provisions of the Act, the provisions of this chapter, or the terms and conditions of a land use permit, the Manager or his designee may issue a citation therefore.
 2. The citation shall be personally served upon the land use permittee, if any, or the person in charge at the site of the project, use or action, and shall be posted at the site. Copies of the citation shall be sent to the Attorney General and filed with the District Court of American Samoa.
 - a. The form of the citation shall be approved by the Attorney General.
 - b. The citation shall be signed by the Manager or his designee at the time of service.
 - c. The citation shall specify the provisions of law or the land use permit condition(s) alleged to be violated.
 - d. The citation shall contain a statement of facts constituting the violation; and
 - e. The citation may include corrective measures, if any, necessary to satisfy compliance with the Act and the

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0215 Citations

A. Citations.

1. A person shall not engage in activities without an approved land use permit, including but not limited to: site preparation, filling, grading, dredging, excavation, erection or siting of temporary or permanent structures or the permanent siting of containers.
2. A land use permittee shall not engage in activities in violation of an approved land use permit, including the terms and conditions so stated;

- provisions of this chapter, including but not limited to, immediate removal of any fill, structure, or other material, and provide for a time period in which compliance shall be effected.
3. A citation may answered in the manner provided in this section.
 - a. If the citation is not answered by appearance, plea, and waiver before the District Court of American Samoa before the close of business hours within seven (7) business days from the date of service of the citation, the defendant must appear in the District Court of American Samoa at the time and date indicated thereon.
 - b. A complaint signed and sworn to by the person who issued the citation, i.e. the Manager or his designee, shall be filed with the clerk of the court before any offense may be heard or plea taken in court. The complaint shall be substantially in the form prescribed for a citation in this section. It may also contain other information pertinent to the alleged offense.
 4. Plea and trial
 - a. After reading the complaint to the defendant, the District Court of American Samoa shall ask the defendant to answer. If the defendant does not contest the allegations, the District Court of American Samoa shall assess the appropriate fine. If the defendant contests the allegations, the person who issued the citation, i.e. the Manager or the Compliance Review Officer, shall present the District Court of American Samoa with the grounds on which it was issued, adding evidence to this end. The Attorney General may assist to the extent deemed necessary.
 - b. The defendant may then introduce evidence to establish the fact that liability should not be imposed.
 - c. The District Court of American Samoa may examine the evidence and question the parties and their witnesses at any time.
 - d. Any person charged with a violation of the Act, the provisions of this chapter or a condition of a land use permit may appear before the clerk of the court in person before the close of business hours and within seven (7) business days from the date of service of the citation and, upon signing a waiver of trial, pay the fine for the offense charged. Prior to signing a waiver of trial and payment of the fine, the person charged with a violation shall be informed of his or her right to appear before the District Court of American Samoa and that a waiver shall have the same force and effect as a judgment of the District Court of American Samoa.
- C. It is a violation of the provisions of this chapter to remove or otherwise deface a posted citation.
 1. The citation shall remain in effect and all project work shall cease, except for mitigative work authorized by Manager, until the citation has been adjudicated, and, if applicable, all fines and costs are paid.
 2. In addition to any civil or criminal penalty, the applicant shall immediately restore the site to the pre-offense condition at no cost to the Territory.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0216 Revocation of a Land Use Permit

- A. If the Manager determines that a land use permittee has violated a provision of the Act, a provision of this chapter or any provision of a land use permit, or that an imminent threat exists to coastal resources or the public's health, safety, or welfare, a land use permit may be revoked pending a hearing before the Board.
- B. Revocation of a land use permit

1. Where a land use permittee is in violation of the Act, a provision of this chapter or any provisions of a land use permit, or where a stop work order or citation has been issued, the Manager shall initiate revocation proceedings by issuing a notice of revocation to the land use permittee, citing the nature of the violation, the legal authority for the proposed action, and the time and date of a hearing to be held before the Board. The land use permittee shall be given at least seven (7) days notice of the hearing.
2. The Board may revoke a land use permit based upon any of the grounds for bringing an enforcement action.
3. Upon revocation of a land use permit no further work other than emergency mitigation measures ordered by the Manager shall be done on a project, use or action until an amended or new land use permit has been applied for and obtained pursuant to the Act and the provisions of this chapter.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0217 Standing

- A. Any person with standing who is aggrieved by any decision of the Manager or the Board may file a motion for reconsideration and appeal the decision.
- B. The following persons have standing to file a motion for reconsideration and appeal a minor land use permit decision of the American Samoa Coastal Management Program:
 1. the applicant for the land use permit;
 2. any landowner or lessee within two hundred (200) feet of the site of the project, use or action; or
 3. any Board member agency.
- C. The following have standing to file a motion for reconsideration and appeal a major land use permit decision of the Board:

1. the applicant for the land use permit;
2. any landowner or lessee within two hundred (200) feet of the site of the project, use or action;
3. Any publicly funded organization representing no less than twenty-five (25) members; or
4. No less than twenty-five (25) members of the public who can demonstrate the decision being appealed impacts the public health, safety, or environmental welfare.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0218 Motion for Reconsideration and Special Land Use Permits

- A. Motion for reconsideration
 1. No appeal of a decision of the Board shall be allowed unless a motion for reconsideration is filed with the Board within ten (10) days of the Board decision being moved for reconsideration. Motions for reconsideration shall be heard by the Board at a regularly scheduled meeting or special meeting held for purpose of hearing the motion no less than ten (10) days and no more than thirty (30) days after the motion for reconsideration is filed. The moving party and any party who has filed written comments on the matter to be heard shall be given no less than seven (7) days notice of the hearing.
 2. The motion for reconsideration shall contain following information:
 - a. Name, address and telephone number of the moving party and basis for standing as set forth in the provisions of this chapter;
 - b. A description of the decision being moved for reconsideration; and
 - c. A written statement of the factual or legal basis for the motion, including such new evidence as may be proffered.

3. The Board shall review the entire record of the matter moved for reconsideration, any new evidence submitted and arguments made, and rule on the motion de novo.
4. The Board, by majority vote, may grant or deny a motion for reconsideration, except that any decision to amend or overturn a land use permit decision requires a unanimous vote and shall contain written findings or fact and conclusions of law.

B. Special land use permits

1. A special land use permit to conduct acts prohibited by the provisions of this chapter may be requested by petition. An applicant may seek a special land use permit under the following procedures:

- a. The applicant shall submit with the motion for reconsideration a petition for a special land use permit to the Director. The petition shall state facts sufficient to establish conformity with the special land use permit requirements listed below. The petition shall include all information required for a major project, all proposed actions to prevent adverse effects, all proposed actions to mitigate adverse effects or restore the site, and a statement indicating why the proposed action is necessary at the site in the manner proposed.

- b. The Board may grant, by unanimous vote of the entire Board, a special land use permit, if the applicant demonstrates that:

- (1) literal enforcement of the applicable provisions of the Act and the provisions of this chapter will cause the applicant undue hardship, excluding economic hardship; and
- (2) such hardship results from conditions peculiar to the applicant's property; and

- (3) such conditions could not reasonably have been anticipated by the American Samoa Coastal Management Program when the provisions of this chapter were adopted; and

- (4) the applicant's plan for the proposed action minimizes any disturbance to the site and any affected area or neighboring property and demonstrates that all reasonable steps will be taken to restore and mitigate any adverse effects; and

- (5) no other feasible alternative site exist; and

- (6) the applicant agrees in writing to abide by the plan submitted under penalty of the total cost to restore the site to its existing conditions; and provided further that

- (7) the land use permit application shall not be for an after-the-fact project, use or activity.

2. A petition for a special land use permit shall be reviewed and considered by the Board pursuant to the same procedures applicable to a major project, except that a public hearing shall be held, pursuant to the same notice requirements as for a public hearing on a major project.

- a. If a special land use permit is granted by the Board, within thirty (30) days following the date of the decision, notice of same shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the Territory which will provide the public an opportunity to appeal.

- b. The Board's denial of a special land use permit is final, the special land use permit applicant has no appeal rights.

3. Nothing herein shall be interpreted to exempt a special land use permit from the

provisions of this chapter protecting Special Management Areas and wetlands.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0219 Appeals

- A. An appeal of the Board’s decision on the motion for reconsideration shall be filed within ten (10) days of the Board’s decision, provided that such appeal is submitted in writing to the Director and contains the information required for a motion for reconsideration.
- B. Within twenty (20) days of receipt of the appeal the Director shall submit the appeal to an administrative law judge. The administrative law judge shall consider the case on the record and arguments of the parties and thereafter submit written findings of fact and conclusions of law.
- C. The administrative law judge shall adopt findings based on the entire record, which shall be reviewable in the High Court of American Samoa in accordance with ASCA §§ 4.1000 et. seq. the American Samoa Administrative Procedures Act.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0220 Standards and Criteria for Review

- A. As a requirement for approval, all projects shall satisfy or be conditioned to satisfy the following criteria:
 - 1. The Project Notification and Review System shall be sensitive to the fa’aSamoa which means the traditional Samoan way of life, including but not limited to:
 - a. recognizing the village council authority in regards to maintaining harmony and welfare of the community; and
 - b. considering the village mitigation ordinances, village wetland resolutions or other applicable policies approved by the village council.
 - 2. The proposed project shall not cause or threaten a substantial, or potentially

substantial, adverse impact in or upon coastal resources.

- a. Adverse impact means an alteration or the sum of alternations which would impair the long-term function, stability, or quality of an ecosystem or human community; which curtail the range of beneficial uses of the natural and cultural environment; which are contrary to territorial environmental laws or provisions of this chapter; or which adversely affect the economic, health, safety or social welfare of a community or the Territory.
- b. Adverse impact includes, but is not limited to:
 - (1) alteration of chemical or physical properties of coastal or fresh waters so that they no longer provide a suitable habitat for natural communities;
 - (2) accumulation of toxins, carcinogens, or pathogens which threaten the welfare of humans or aquatic or terrestrial organisms;
 - (3) disruption of the ecological balances in coastal or fresh waters upon which natural biological communities depend;
 - (4) disruption or burial of marine or stream bottom communities;
 - (5) introduction of man-made substances foreign to the terrestrial or marine environment;
 - (6) disruption of archaeological/cultural/ historic resources, properties of sites;
 - (7) disruption of agricultural, fishing activities or recreational opportunities; and
 - (8) disruption of the natural protective and beneficial functions of coastal resources.

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3. The proposed project shall be compatible with existing adjacent uses and adopted plans;
 4. That no alternative site exists for the proposed project and that no alternative construction methods exist which could avoid or lessen any adverse impacts to coastal resources;
 5. The proposed project shall not cause an excessive demand on existing facilities and services.
- B. The following standards of the Board shall be met for approval of a land use permit, provided that due deference shall be given to the Board member with jurisdiction of specific criteria and that the project, use or activity is consistent with the provisions of this chapter and the sections on Special Management Areas, wetlands, and coastal hazards:
1. Archaeological/cultural/historic resources
 2. Commerical agricultural development
 3. Major facility siting
 4. Marine resources, reef, and fisheries protection and development
 5. Recreation and public access
 6. Water and air quality
 7. Unique areas
- C. Archaeological/cultural/historic resources.
1. The significant archaeological/cultural/historic resources of the Territory shall be protected and preserved.
 - a. Archaeological/cultural/historic resources means those sites, structures, and artifacts which possess material evidence of human life and culture of the prehistoric and historic past, or which have a relationship, including legendary, to events or conditions of the human past.
 2. All archaeological/cultural/historic resources within the project, use or activity area shall be identified and evaluated for significance by a trained cultural resource specialist.
 - a. A trained cultural resource specialist includes an archaeologist; historian, or anthropologist who shall possess at least a masters of arts in their field and have one year of supervisory experience in their field.
 3. An archaeological/cultural/historic resource is significant if the resource is:
 - a. at least fifty (50) years old, possesses historic integrity, and
- b. Protection and preservation shall be accomplished by the following procedures, provided that any federal undertaking as defined in the National Historic Preservation Act of 1966, as amended, 16 USC 470, et. seq., shall comply with section 106 of the Act.
 - (1) For projects over \$250,000, the applicant is responsible for ensuring that the section 106 process is carried out.
 - (2) For projects under \$250,000 dollars the Board will assume responsibility for identification, evaluation, assessment and mitigation. In this case the applicant will allow the Board access to the project area when necessary to carry out these procedures.

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- b. is associated with events that have made a significant contribution to the broad patterns of Samoan history; or
 - c. is associated with the lives of persons significant in Samoan past; or
 - d. embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
 - e. has yielded, or may be likely to yield, information important in prehistory or history.
4. If the archaeological/cultural/historic resource is significant, an assessment shall be made as to whether the project may affect the historic resource. If the project may affect the historic resources, an assessment shall be made as to whether that effect will be adverse.
- a. A project has an effect on an archaeological/cultural/historic resource when the project, use or activity may alter characteristics of the resource that qualify the resource as significant.
 - b. A project, use or activity is considered to have an adverse effect when the effect on an archaeological/cultural/historic resource may diminish the integrity of a location, design, settling, materials, workmanship, feeling, or association of a resource. Adverse effects on archaeological/cultural historic resources include, but are not limited to:
 - (1) Physical destruction, damage, or alteration of all or part of the resource.
 - (2) Isolation of the resource from or alteration of the character of the property's setting when that character contributes to the significance of the resource.
 - (3) Introduction of visual, audible, or atmosphere elements that are out of character with the property or alter its setting.
 - (4) Neglect of a property resulting in its deterioration or destruction.
- c. The assessment shall be documented in a letter report to the Board prepared by a cultural resource specialist and signed by the applicant. The letter report shall make and justify one of the following determinations:
- (1) No effect; or
 - (2) No adverse effect (there will be an effect, but not an adverse one, e.g. repairing a roof on a historic structure with historically accurate materials and not altering the roof line); or
 - (3) Adverse effect.
5. If the effect on the historic resource may be adverse, mitigation shall be conducted by the applicant.
- a. The applicant, in consultation with the Board, shall enter into a mitigation agreement that determines what mitigation shall occur.
 - b. Mitigation may include, but is not limited to:
 - (1) Avoidance of the historic property.
 - (2) Monitoring with data recovery.
 - (3) Data recovery.
 - (4) Museum displays related to the historic property adversely affected.

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(5) Educational videos related to the historic property adversely affected.

(6) Research projects related to the historic property adversely affected.

6. If the effect will be adverse and no mitigation agreement can be reached, the Board may deny a permit to protect the historic resource.

7. The Board shall not grant a land use permit to an applicant who, with intent to avoid the requirements of this section, has intentionally adversely affected an archaeological/cultural/historic resource to which the land use permit would relate, or having legal power to prevent it, allowed such an adverse effect to occur; provided that the Board, after consultation with the applicant, determines that circumstances justify granting a land use permit despite the adverse effect created or permitted by the applicant and the applicant enters into a mitigation agreement with the Board.

D. Commercial agricultural development

1. Agricultural development shall be promoted in a manner consistent with sound agricultural practices which means the use of methods and technologies that maximize the potential for the long-term maintenance of soil fertility, and which minimize the escape of soil particles or agricultural chemicals to receiving waters.

2. Commercial and subsistence agriculture shall be encouraged on lands suitable for cultivation. Agricultural action shall be accompanied by best management practices designed to protect land and water resources and maintain crop yields, which include:

- a. cultivation on suitable slopes;
- b. use of adequate ground cover to prevent soil erosion;
- c. proper use of pesticides, herbicides, and fertilizers;

d. techniques to maintain soil fertility; e.g. fallow periods; and

e. techniques to reduce non-point source pollution and protect water quality.

E. Major facility siting.

1. Major facility means, but is not limited to, construction or major repair of the following:

- a. water supply systems;
- b. water or sewage treatment plants;
- c. solid-waste disposal areas and facilities;
- d. power production, distribution and transmission facilities;
- e. roads, highways, seaports, airports, aids to navigation;
- f. major recreation areas; and
- g. national defense installations.

2. Major facilities shall be sited and designed to minimize adverse environmental and social impacts and promote orderly and efficient economic development.

a. Major facilities not dependent on a waterfront location shall be located elsewhere, unless no feasible alternative sites exist;

b. All efforts shall be made so that water-dependent major facilities are accommodated through planning.

3. The Territory shall recognize identified regional benefits and national interests in the siting of major facilities and shall adequately consider them in major facility siting decisions.

4. A public hearing as provided by this chapter shall be required for all major facilities.

F. Marine resources, reef, and fisheries protection and development

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1. Living marine resources and their habitats shall be protected from over harvesting or degradation, in accordance with ASCA §§ 24.0300 et. seq., the Department of Marine and Wildlife Resources Act.
 2. Coral reefs shall be protected and restored.
 - a. Coral means any living aquatic organism of the subphylum cnidaria that are capable of secreting hard skeletal parts or can incorporate stony secretions within or around their tissues, including, but not limited to, hermatyic corals, black coral, organpipe corals, fire corals, and lace corals.
 - b. Coral reef means a structure which may or may not be adjacent to the shoreline, formed and bounded by the gradual deposition and calcareous secretions of coralline materials.
 - c. Coral reefs and other submerged lands shall not be dredged, filled, or otherwise altered or channeled unless it can be demonstrated that there is a public need, there are no feasible, environmentally preferable alternatives, and unless measures are taken to minimize adverse impacts.
 - d. Coral reefs shall be protected from sedimentations, over fishing, runoff, and the impacts resulting directly and indirectly from other activities to the maximum extent feasible. Degraded reefs shall be restored wherever feasible.
 3. Fisheries development shall be promoted in a manner consistent with sound fisheries management.
 - a. Shoreline areas suitable and necessary for the support of fishery development shall be reserved for such use.
 - b. Fisheries development shall be guided by a fisheries management program which conserves stocks, protects marine habitats, and maintains sustained yields.
 4. Permissible uses for marine resources and habitats:
 - a. maintenance of highest levels of water quality;
 - b. non-structural projects preserving fish and wildlife habitat, and
 - c. creation of underwater preserves.
 5. Conditional use for marine resources and habitats:

Dredging of low or moderately productive corals and reefs associated with permitted uses and activities for which there is a demonstrated public need.
 6. Prohibited uses for marine resources and habitats:
 - a. destruction of reefs and corals not associated with permitted projects; and
 - b. taking corals for other than scientific study.
 7. Ofu Territorial Marine Park, Fagatele Bay National Marine Sanctuary, and the National Park of American Samoa
 - a. The irreplaceable marine and coastal resources of Ofu Territorial Marine Park, Fagatele Bay National Marine Sanctuary, and the National Park of American Samoa shall be protected as a resources for present and future Samoans to the greatest content possible.
 - b. Land use permit applications for sites adjacent to Ofu Territorial Marine Park and Fagatele Bay National Marine Sanctuary, shall be rigorously reviewed to ensure minimum adverse impact to marine and coastal resources, including water-quality, habitat, fish and wildlife, and recreational opportunities.
- G. Recreation and public access

1. Recreation opportunities and shorefront public access shall be improved and increased for the public.
 - a. The acquisition, siting, development, and maintenance of varied types of recreation facilities that are compatible with their surrounding landscape and land uses, and which serve the recreation and shorefront public access needs of villages shall be promoted.
 - b. Acquisition and/or use agreements and minimal development of passive recreation sites such as marine and wildlife conservation areas, scenic overlooks, trails, parks, and historic sites shall be promoted.
 1. Public access to and along the ocean shall be maintained, improved and increased in accordance with ASCA §§ 18.0100 et. seq., the Department of Parks and Recreation Act., including:
 - a. shorefront areas suitable for recreation use shall be reserved for such use and physical access to these areas shall be provided where feasible; and
 - b. visual access to the ocean from the road parallel to and near the shoreline shall be maintained where feasible.
 2. Public lands shall be managed to maintain physical and visual public access. Where public access must be eliminated because of security or other reasons, similar access shall be created as near as practical to the curtailed access.
- H. Water and air quality
1. Water quality shall be maintained.
 - a. Territorial water quality standards shall be the standards of the American Samoa Coastal Management Program and land use permit applications shall adhere to those standards, in accordance with ASCA §§ 24.0100 et. seq., the Environmental Quality Act.
 - b. Consistent with Territorial water quality standards, degraded water quality shall be restored to acceptable levels and potential threats to water quality shall be prevented where feasible.
 - c. Non-point source pollution shall be controlled through implementation of best management practices.
 2. Safe drinking water shall be protected and maintained.
 - a. Territorial safe drinking water standards shall be the standards of the American Samoa Coastal Management Program and land use permit applications shall adhere to those standards, in accordance with ASCA §§ 24.0100 et. seq., the Environmental Quality Act.
 - b. Drinking water sources, including aquifer recharge areas, above and below ground, shall be protected from contamination due to sedimentation, saltwater intrusion, or other sources of pollution.
 - c. Drinking water systems shall be improved to protect public health and welfare.
 3. High standards of air quality shall be maintained.
 - a. Territorial air quality standards shall be the standards of the American Samoa Coastal Management Program and land use permit applications shall adhere to those standards, in accordance with ASCA §§ 24.0100 et. seq., the Environmental Quality Act.
 - b. Consistent with Territorial air quality standards, degraded air quality shall be restored to acceptable levels and potential threats to air quality shall be prevented when feasible.

I. Unique Areas

1. Unique areas and their values shall be protected from adverse impacts. Development in areas adjacent to unique areas shall be rigorously reviewed to prevent impacts that would significantly degrade such areas.
2. Critical habitats shall be protected, conserved and managed in the Territory.
 - a. Critical habitat means a land or water area where sustaining the natural characteristics is important or essential to the productivity of plant and animal species, especially those that are threatened or endangered.
 - b. Threatened or endangered species means a species listed by the Department of Marine and Wildlife Resources as being threatened, or endangered, in accordance with ASCA §§ 24.0700 et. seq., the Endangered Species Act and ASCA §§ 24.2300 et. seq., the Conservation of Flying Foxes Act.
 - c. No taking of endangered or threatened species shall be allowed.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0221 Special Management Areas

- A. Special Management Areas mean those areas duly designated by the Act or the provisions of this chapter that possess unique and irreplaceable habitat, products or materials, offer beneficial functions or affect the cultural values or quality of life significant to the general population of the Territory and fa’aSamoa.
- B. Designated Special Management Areas
 1. The following boundaries delineate the Special Management Areas of American Samoa:
 - a. Pago Pago Harbor Special Management Area is delineated by a line drawn from Goat Island Point to the jetty at Leloaloa and includes all land and water resources on the same

side of the American Samoa Highway 001 paralleling the shoreline around the Pago Pago harbor;

- b. The Leone Pala Lagoon is delineated by a line drawn parallel with the shoreline at the ocean terminus of the Leafu stream, and adjacent wetlands as delineated by the provisions of this chapter; and
- c. The Nu’uuli Pala Lagoon is delineated by a line drawn from Avatele Point, the eastern most point of the airport, to Mulinu’u Point, the nearest part of Coconut Point, and includes all water resources of the lagoon, plus adjacent wetlands as delineated by the provisions of this chapter.

1. Boundary maps, at a minimum of 1”=2’ scale, for all wetland areas included as Special Management Areas shall be maintained for public inspection at the Department of Commerce.
2. Any proposed project, use or action in a Special Management Area shall be deemed a major project, and all proposed projects, uses, or activities in any Special Management Area, other than the Pago Pago Harbor Special Management Area, shall require a public hearing as provided by this chapter.

C. Policy for Special Management Areas

1. The functions, values and benefits of Special Management Areas shall be protected so that their benefits can be enjoyed by present and future generations of the Territory.
2. Actions that degrade, limit, or eliminate Special Management Areas functions, values, and benefits to the public shall be prohibited.
3. Lagoon, and reef areas. Any project proposed for location within a designated Special Management Area which also is

characterized as a lagoon or reef area shall comply with the following standards:

- a. subsistence usage of coastal areas and resources shall be insured;
 - b. living marine resources, particularly fishery resources, shall be maintained for optimum sustainable yields;
 - c. adverse impacts to reefs and corals shall be prevented;
 - d. lagoon and reef areas shall maintain or enhance subsistence, commercial and sport fisheries;
 - e. lagoon and reef areas shall be protected to assure the maintenance of natural water flows, natural circulation patterns, natural nutrient and oxygen levels and to avoid the discharge of toxic wastes, sewage, petroleum products, siltation and destruction of productive habitat;
 - f. areas and objects of historic and cultural significance shall be preserved and maintained; and
 - g. underwater preservation areas shall be designated.
4. Wetland areas. Any project proposed for location within a designated Special Management Area and a wetland shall be evaluated to determine its compatibility with this section and the wetlands section of this chapter.
5. Shoreline Areas. Any project proposed for location within a designated Special Management Area and a shoreline area shall be evaluated to determine its compatibility with this section, the wetlands section of this chapter, and with the following standards:
- a. the impact of on shore activities upon wildlife, marine or aesthetic resources shall be minimized;
 - b. the effects of shoreline development on natural beach processes shall be minimized;
 - c. removal of hazardous debris from beaches and coastal areas shall be required; and
 - d. where possible, public landholding along the shore shall be maintained and increased, for the purpose of access and hazard mitigation; and in addition to deciding whether the proposed project is consistent with the above standards, Board members shall consider the following in their review of coastal land permit applications:
 - (1) whether the proposed project is water-dependent or water-related in nature;
 - (2) whether the proposed project is to facilitate or enhance coastal recreational, subsistence, or cultural opportunities (i.e. docking, fishing, swimming, picnicking, navigation devices);
 - (3) whether the existing land use including the existence of roadways, has irreversibly committed the area to uses compatible with the proposed project, particularly water-oriented uses, and provided that the proposed project does not create cumulative and secondary adverse impacts;
 - (4) whether the proposed project is single-family dwelling in an existing residential area and would occur on private property owned by the same owner as of the effective date of the program, of which all or a significant portion is located in the Special Management Areas or no reasonable alternative is open to the property owner to trade land, relocate or sell to the government;

- (5) whether the proposed project would be safely located on a rocky shoreline and would cause adverse impacts to wildlife, marine or scenic resources;
 - (6) whether the proposed project is designated to prevent or mitigate shoreline erosion; and
 - (7) whether the proposed project would be more appropriately located in the port and industrial area.
6. Notwithstanding any other provisions of this chapter, any proposed project, use or action in the Pago Pago Harbor Special Management Area shall be evaluated in connection with the following objectives and priorities of use:
- a. The Pago Pago Harbor area shall be developed to emphasize:
 - (1) the value as a working port and safe harbor; and
 - (2) to protect the natural resources and water quality;
 - b. Priorities of use:
 - (1) Water-dependent uses and activities shall have highest priority.
 - (2) Water-related uses and activities shall have second priority.
 - (3) Uses and activities which are neither water-dependent nor water-related, but which are compatible with water-dependent and water-related uses and activities or are for recreational activities or a public use shall receive third priority.
 - (4) All other uses and activities shall have lowest priority and will normally be denied.
 - c. Any project proposed for location as a port or industrial project in the Pago Pago Harbor Special Management Area shall comply with the following standards:
 - (1) siting of port and industrial development shall comply with the long-term economic and social goals of the Territory;
 - (2) development proposals shall be considered from the perspective of port-related opportunities and constraints which are applicable to the Territory;
 - (3) the limited availability of the port and industrial resources shall be recognized in making land use allocation decisions;
 - (4) development shall ensure respect for the Territory's inherent natural beauty;
 - (5) shoreline locations shall be limited to water-dependent and water-related projects;
 - (6) the amount of shoreline frontage utilized by any project, regardless of the extent to which the project may be water-dependent, shall be minimized to the greatest extent practicable; and
 - (7) to the maximum extent practicable, petroleum based coastal energy facilities shall be located within the port and industrial area.
- D. Procedures to establish a Special Management Area
1. Pursuant to the Act, the Board is authorized to recommend to the Governor areas of the Territory to be designated as Special Management Areas, and authorized to propose modifications to the established boundary of any existing Special Management Area.

2. The following procedures shall apply to nominations for designation or modification of the boundary of a Special Management Area:
 - a. Proposals. Any territorial agency, any public funded organization representing no less than twenty-five (25) members, or no less than twenty-five (25) members of the public, may propose to the Board the designation or modification of a Special Management Area.
 - b. Supporting documentation. Proposals for the designation or modification of a Special Management Area shall include detailed documentation supporting the proposal. The documentation shall address the criteria for consideration set forth in this section, and may include other information pertinent to the area proposed for designation or modification.
 - c. Public Notice. Within thirty (30) days of receipt by the Board of the proposal for designation or modification, the Board shall cause to be published in a newspaper of general circulation, at least once a week for three (3) consecutive weeks, public notice of the proposed designation or nomination. The Board shall further cause such public notice to be personally served upon the Secretary of Samoan Affairs and the pulenu'u of each village adjacent to a proposed Special Management Area. Such notice shall describe the area involved, advise the public that a record of the proposal is available for inspection, that comments by the public will be accepted for a period of forty-five (45) days from date of first publication of the notice, that comments received will be considered by the Board in reviewing the proposal, and advising the public of the places and dates of no less than two (2) public hearings which shall be held in order to consider the proposal.
 - d. Technical findings. On all proposals to designate or modify a Special Management Area, technical findings on the proposal and its potential impacts shall be prepared by each Board member agency. The Board member agency shall determine the appropriateness of the proposal to that agency's respective jurisdiction and permitting authority, and may further comment on the appropriateness of the proposal under the Act and the provisions of this chapter. The technical findings shall be prepared and made available to the public prior to the public hearings, and shall be considered by the Board in making its decision.
 - e. Public hearings. Within forty-five (45) days of the receipt of a proposal for designation or modification of the boundary of a Special Management Area, no less than two public hearings shall be held to consider the proposal. One public hearing shall be held at a place convenient to the general public. A second public hearing shall be held at or as near as reasonably practicable to the area affected by the proposal.
 - f. The Project Notification and Review System decisions to nominate. Within thirty (30) days of the closure of the comment period, upon review of the entire record of the proposal for designation or modification of a Special Management Area, including technical findings, supporting documentation, and public comments, the Board shall determine whether to nominate the proposal to the Governor. The Board may, in accepting a proposal for nomination, make minor amendments to the proposal; provided that any amendment which increases

the size of the affected area, or alters the nature of the designation, shall require further public hearings in accordance with this section. A decision by the Board to nominate, nominate with amendments, or deny the proposal shall be accompanied by written findings of fact and conclusions of law.

- g. Upon a decision by the Board to nominate to the Governor a proposal to designate or modify a Special Management Area, the Manager shall certify the nomination as being in compliance, or not in compliance, with the Act and the provisions of this chapter. If in compliance, the Manager shall transmit the nomination to the Governor for approval. The nomination shall be either approved, or disapproved, by the Governor within thirty (30) days of receipt of the nomination. The Governor’s decision to approve, or disapprove, is final.

E. Criteria for designation or modification of a Special Management Area

- 1. In reviewing a proposal for designation or modification of a Special Management Area, the Board shall consider the following natural resource criteria for special management status:
 - a. areas of unique, scarce, fragile, or vulnerable natural habitat or areas of historical significance, cultural value, or scenic importance (including resources on or eligible for the National Register of Historic Places);
 - b. areas of high natural productivity or critical habitat for living resources, including threatened or endangered species;
 - c. areas of outstanding recreational value or potential;
 - d. areas which, if development were permitted, might be subject to

significant hazard due to storms, landslides, floods, erosion, settlement, or salt water intrusion.

- e. areas needed to protect, maintain, or replenish coastal lands or resources, including coastal floodplain, aquifers and their recharge areas, estuaries, coral reefs and beaches; or
- f. areas needed for the preservation or restoration of coastal resources due to the value of those resources for conservation, recreational, ecological, or aesthetic purposes.

2. The following commercial criteria shall also be considered for special management status:

- a. areas where developments and facilities are dependent either upon the utilization of, or access to, coastal waters or of geographic significance for industrial or commercial development;
- b. areas of urban concentration where shoreline utilization and water uses are highly competitive;

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0222 Wetlands

A. Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically and adapted for life in saturated soil conditions.

- 1. The phrase “under normal circumstances” which, as used in the definition of wetlands, means situations in which the vegetation, hydrology and soils have not been substantially altered by human activity.
- 2. Wetlands include but are not limited to pala, cultivated and non-cultivated marshes, mangroves, streams, springs, swamps, aquifer recharge areas, floodplains, streams, watersheds, and nearshore waters.

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- a. Watershed means a distinct area bordered by features of highest continuous elevations that is usually accepted by surface drainage leading to the ocean.
 - b. Stream means a natural pathway for surface water drainage or runoff, often intermittent in flow, and usually characterized by unique riparian plant and animal communities.
 - c. Nearshore waters means those waters within the territorial sea.
 - d. Mangroves means the characteristic littoral plant formation of tropical and subtropical sheltered coastlines. Generally mangroves are trees and bushes growing up to the high tide level along coastlines or into stream mouths. Mangrove root systems are regularly inundated with saline water, though freshwater surface runoff and flooding may result in brackish conditions.
 - e. Aquifer recharge means a distinct area from which surface water runoff is concentrated and enters the earth where the water is then stored in a stratum of permeable rock, and or gravel, and flows freely through the intervening spaces of the rock. When the underlying rock is impermeable an aquifer acts as a groundwater reservoir which supplies water for wells and springs.
3. Adjacent wetlands are wetlands separated from other waters of the United States by artificial dikes or barriers, natural river berm, or beach dunes.
 4. The following Samoan terminology applies to wetlands:
 - a. Pala approximately translates to mangrove swamp;
 - b. Taufusi approximately translates to taro freshwater march;
 - c. Laueleele susu approximately translates to land that is wet;
- B. Delineation of Wetlands.
1. Delineation by the American Samoa Coastal Management Program shall use wetlands delineation techniques established in the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, or revised standards as adopted.
 2. Wetland delineation shall be determined with evidence of a minimum of three positive indicators, at least one from each of the three parameters of hydrology, soils, and vegetation.
 - a. Under normal circumstances all three must be found before a positive determination can be made.
 - b. In atypical situations, evidence may be developed from historical data, recent existing data and observations made in the field.
- C. Policy on wetlands
1. Wetlands areas shall be protected from significant disruption of their physical, chemical, and biological characteristics and values. Only uses dependent upon such areas may be permitted.
 2. Wetlands shall be preserved, protected, conserved, and managed in the Territory.
 - a. Despoliation and destruction of wetlands shall be prevented by insuring that development adjacent to wetlands areas shall be designed and sited to prevent impact that would significantly degrade such areas;
 - b. The present and potential value of wetlands shall be protected for food production, wildlife habitat, storm and flood control, water quality, recreation, education, and research; and
 - c. The use and development of wetlands areas shall be regulated in order to secure the natural benefits of wetlands,

consistent with the general welfare of the Territory, including:

- (1) adequate water flow, nutrients and oxygen levels shall be ensured;
 - (2) the natural ecological and hydrological processes and mangrove areas shall be preserved;
 - (3) critical habitat that is in a wetlands shall be maintained and, where possible, enhanced so as to increase the potential for survival of rare and endangered flora and fauna;
 - (4) public landholding in, and adjacent to, wetlands areas shall be maintained and, to the extent possible, increased, for the purpose of access and/or hazard mitigation; and
 - (5) wetlands resources shall be utilized for appropriate agriculture, recreation, education, public open space and other compatible uses which would not degrade productivity.
3. A policy of “no net loss” of wetlands in the Territory is established that includes no net loss of wetlands value and function, as well as, actual acreage loss. Providing wetlands conservation in order to achieve no net loss include the protection of the following values:
- a. flood and storm control by the hydrological absorption and storage capacity of freshwater wetlands;
 - b. wildlife habitat by providing breeding, nestling, and feeding grounds and cover for the many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare species such as the Australian gray duck;
 - c. protection of subsurface water resources and provisions for valuable watersheds and recharging groundwater supplies;
 - d. recreation areas by providing areas for hunting, fishing, boating, hiking, bird watching, photography, swimming;
 - e. erosion control by serving as sedimentation areas and filtering basins, absorbing silt and organic matter thereby protecting channels, and coral reefs;
 - f. educational and scientific research opportunities;
 - g. sources of nutrients in freshwater and brackish water food cycles, nursery and feeding grounds, and sanctuaries for fish species; and
 - h. agricultural uses such as taro production and harvest of natural wetlands products.
- D. Wetlands jurisdictional limits.
1. The jurisdictional limits of authority of the American Samoa Coastal Management Program with regard to wetlands is determined by the Submerged and Tidal Lands Act of 1974, 48 USC 1705(a).
 - a. The American Samoa jurisdictional limits of authority is based on the conveyance of the “waters of the United States” to American Samoa, including tidelands, submerged lands, or filled lands.
 - b. Subject to valid existing rights, all right, title, and interest of the United States in lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastline of American Samoa, as heretofore or hereafter modified by accretion, erosion, and reliction, and in artificially made, filled in, or reclaimed

lands which were formerly permanently or periodically covered by tidal waters, were conveyed to the government of American Samoa, to be administered in trust for the people thereof.

2. Waters of the United States means:

- a. all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; and
- b. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including such waters:
 - (1) which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) which are used or could be used for industrial purposes by industries in interstate commerce.
- c. all impoundments of waters otherwise defined as waters of the United States under the definition;
- d. tributaries of waters identified in paragraphs (2)(a) thru (d) of this section.

3. Limits of jurisdiction of the waters of the United States.

- a. Territorial Sea. The limit of jurisdiction in the Territorial seas is measured from the baseline in a

seaward direction a distance of three nautical miles.

- (1) A baseline is a continuous line which encircles an island or atoll and
- (2) A baseline is measured as follows:
 - (a) The baseline of an island or portion of an island lacking a barrier reef, fringing reef, or other reef system is seaward from the ordinary high water mark; or
 - (b) The baseline of an atoll or island or portion of an island having a barrier reef, fringing reef, or other reef system, is the seaward edge of the reef system, i.e. those outermost elevations of the reef which are above water at low tide.

b. Tidal Waters of the United States.

- (1) Tidal waters means those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind or other effects.
- (2) The landward limits of jurisdiction in tidal waters:
 - (a) extends to the high tide line which means the line of intersection of the land with the water's surface at high tide. The high tide line may be determined in the absence of actual data by a line along the shore that consists of a

more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gauges, or other suitable means, or

(b) when adjacent non-tidal waters of the United States are present, the jurisdiction extends to the limits identified in paragraph (c) of this subsection.

c. Non-tidal waters of the United States. The limit of jurisdiction in non-tidal waters is:

(1) in the absence of adjacent wetlands, the jurisdiction extends to the ordinary high water mark which means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, or other appropriate means that consider the characteristics of the surrounding areas.

(2) when adjacent wetlands are present, the jurisdiction extends beyond the ordinary high water mark to the limit of the adjacent wetlands; or

(3) when the waters of the United States consist only of wetlands, the jurisdiction extends to the limit of the wetland.

E. Wetland buffer and prohibited activity.

1. Buffer zone means a set back area in which development of any kind is prohibited.

2. A buffer zone around the wetland delineated boundary, including streams,

shall be established in the following manner:

a. A twenty-five (25) foot buffer zone shall be established between a wetland delineated boundary and non-commercial or non-industrial development.

b. A fifty (50) foot buffer zone shall be established between a wetland delineated boundary and commercial or industrial development.

3. Human alteration of sand dunes and mangroves stands is prohibited within VE and V zones of American Samoa Federal Insurance Rate Maps, which would increase potential flood damage.

F. Wetlands regulated activities; permitted and prohibited projects, uses or activities; and violations.

1. Regulated activities includes:

a. Village ordinances adopted by the village councils, including but not limited to:

(1) The Resolution by the Leone Village Council, a resolution to protect and preserve the Leone Pala, including mangroves and streams, ratified on March 5, 1994.

(2) The Nu'uuli Wetland Agreement, a declaration to protect and preserve the Nu'uuli Pala Lagoon, ratified on May 12, 1995; and

(3) The Ofu (Vaoto) Marsh Resolution, a resolution recognizing the valuable natural resources of the Ofu wetland and an agreement to preserve and protect the Ofu Marsh, ratified on September 23, 1996.

b. Altering wetlands, which includes, but is not limited to:

(1) The act of placing fill.

- (2) The filling, dumping, or depositing of any soil, stones, sand, gravel, mud, aggregate of any kind or garbage, either directly or indirectly, on or in any coastal wetlands;
 - (3) The dredging, excavating or removal of soil, mud, sand, gravel, flora, fauna or aggregate of any kind from any coastal wetlands;
 - (4) killing or materially damaging any flora or fauna on or in any coastal wetland; and
 - (5) the erection on coastal wetlands of structure which materially affect the ebb and flow of the tide.
2. Permissible uses of wetlands:
 - a. preservation and enhancement of wetlands; and
 - b. preservation of wildlife, primary productivity, conservation areas and historical properties in both wetlands and unique areas.
 3. Conditional use wetlands:
 - a. Projects for which there is demonstrated public need which cause a minimal amount of damage to the wetlands and other coastal resources.
 - b. Any such use shall take into consideration the no net loss policies enumerated in this section.
 - c. Any such use shall include “off-set” measures, which means least-damaging practicable alternatives: avoidance, minimization, and compensatory mitigation as determined by the Board.
 - d. All projects, uses, or activities on condition that any adverse impact to the wetland is compensated in kind, meaning that for every acre adversely impacted a specific acreage shall be rehabilitated:
 - (1) creating new wetlands at a minimum 1:1 ratio or restoration of former wetlands at a minimum 1:1 ratio, and
 - (2) rehabilitation of deteriorated wetlands at a minimum 1:2 ratio.
 4. Prohibited uses of wetlands:
 - a. Land fill, dumping of solid waste, discharge of pollutants, and clearing, grading or removal of natural vegetation or any other activity or use not associated with a conditional use which limits or eliminates beneficial functions or values of wetlands or unique areas; and
 - b. Adverse impact on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances shall be prohibited.
 5. Violations
 - a. It shall be a violation of this section for any person to fill, make deposits on, or in any fashion create or attempt to create, artificial land, or augment or add to the natural shoreline of any coastal area or wetland area or drain a wetland area without a land use permit or in violation of a permit. This section applies to principals, their agents, and contributors.
 - b. It shall be a violation of this section for any person to fill, make deposits on, or in any fashion attempt to create artificial land, or augment the area within the buffer area of a wetland. This includes alteration of the surface of the land, disturbance of vegetation or alteration of the hydrology.
 - c. Any person who violates this section is guilty of a class B misdemeanor and shall be subject to civil fines according to law.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0223 Coastal Hazards

A. Coastal hazards policy

1. Coastal hazards means hazards to life and property from flooding, tsunamis, landslides, slope, and shoreline erosion, storm surge, and winds.
2. Life and property shall be protected from such coastal hazards.
3. Projects, uses or activities in coastal hazards areas, including floodplains, storm wave inundation areas, landslide hazard areas, and erosion-prone areas shall normally be denied, unless:
 - a. there is a public need, including recreational; and
 - b. the development is located and designed to minimize risks to public safety; and
 - c. is water-dependent or water-related, if adjacent to the shoreline; and
 - d. is compatible with adjacent land uses; and
 - e. traditional Samoan uses; and
 - f. has no feasible, environmentally preferable, alternative sites, provided that:
 - (1) individual and/or communal family lands have been exhausted; and
 - (2) the proposed project, use or activity does not pose adverse environmental impact.
 - g. alterations of the natural shoreline, streams, and hillsides are minimized; and
 - h. adverse effects on habitats, streams, and drainage are minimized.
4. Projects, uses or activities permitted in areas prone to flooding, landslides, and

erosion shall meet the standards of the American Samoa Floodplain Management Regulation.

- a. Development in areas prone to flooding, landslides, and erosion that will not require protection through dikes, dams, levees, groins, seawalls, retaining walls, shoreline protection or other structures shall be preferred over uses that require such protection.
- b. Structures to protect existing development against flooding, landslides, and erosion shall comply with the following criteria:
 - (1) remedial protective measures must avoid impacts on adjacent properties;
 - (2) there are no feasible environmentally preferable alternatives;
 - (3) alterations of the natural shoreline, streams, and hillsides are minimized.

B. Shoreline development policy

1. In the area measured two hundred (200) feet horizontally inland from the mean high-tide mark, projects, uses or activities shall normally be denied.
2. In villages with a ratified Village Mitigation Ordinance, the minimum setback established in a Village Mitigation Ordinance shall be imposed between the proposal project, use or activity and identified coastal hazards lands.
 - a. Village mitigation ordinance means a village regulatory instrument established collectively with a village council and the American Samoa Coastal Management Program that sets forth village or municipal mitigation policies for future village development which compliment and supplement Village Regulations including the most feasible coastal hazards setbacks specific to village geography.

- b. Village Mitigation Ordinances have been developed and ratified in the following villages of American Samoa:
 - (1) Eastern District:
 - (a) Alofau, ratified on July 1, 1997;
 - (b) Tula, ratified on July 2, 1997, and
 - (c) Aua, ratified on July 3, 1997.
 - (2) Western District:
 - (a) Nua & Se’etaga, ratified June 3, 1997;
 - (b) Utulei & Gaiaivai, ratified June 5, 1997;
 - (c) Afao, ratified June 6, 1997; and
 - (d) Amanave, ratified June 10, 1997.
 - (3) Manua District:
 - (a) Fitiuta, ratified June 2, 1997.
- c. Subsequent Village Mitigation Ordinances shall be adopted by the American Samoa Coastal Management Program thirty (30) days after a village council has ratified such ordinance.
- c. retaining earth slopes through use of retaining walls and professionally designed slope stabilization techniques; and
- d. controlling off-site movement of surface soils during construction through use of silt fences, berms, dikes, desilting ponds, ground netting, and other temporary measures to be maintained throughout construction.

2. Development on steep slopes

- a. Projects, uses or activities that develop slope areas of grades zero to twenty percent (0-20%), outside of known landslide paths, and having stable soils for the intended use shall generally be permitted.
- b. Projects, uses or activities that develop slope areas of grades twenty to forty percent (20-40%), outside of known landslide paths, and having stable soils for the intended use may be conditionally permitted.
- c. Projects, uses or activities that develop slope areas of grades greater than forty percent (40%), shall normally be denied; provided that feasible environmentally preferable alternatives to the proposed action exist.

C. Soil erosion policy.

- 1. All clearing, grading, or construction on slopes shall use best management practices or avoid or minimize soil erosion, including but not limited to:
 - a. conducting a soils survey and providing a geological report of the affected project, use or activity;
 - b. minimizing on-site disturbance by utilizing careful design and knowledge of soils, vegetation, and terrain and other available techniques;

- 3. Road building and construction activities that severely alter land contours, are located in steep areas, or may otherwise promote soil erosion shall be minimized and controlled to reduce or eliminate soil erosion.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0224 Territorial Environmental Assessments

A. Procedures

- 1. Environmental assessment means a written evaluation to determine whether an action

- may have a significant adverse impact on the coastal zone.
2. Activities subject to these provisions. The Board shall require an environmental assessment if:
 - a. any member or members of the Board with permitting or regulatory jurisdiction over the application request(s) an environmental assessment.
 - b. the Board finds a new or expanded source of pollutants resulting in a potentially dangerous condition having a significant adverse impact on the health, safety, and welfare of the public;
 - c. the Board finds a significant adverse impact to critical habitat;
 - d. a project, use or activity is Federally funded;
 - e. a project, use or activity costs more than \$250,000; or
 - f. a petition signed by not less than twenty-five (25) members of the public is submitted to the Board.
 3. Scoping meetings for proposed actions. For land use permit applications subject to this section, a scoping meeting of the Board may be requested by the land use project applicant or by any Board member. Scoping meetings may be held at a regular or special meeting of the Board. Scoping sessions shall be held for the purposes of identifying potential significant adverse impacts to coastal resources which the project may cause and determining whether an environmental assessment will be required for the particular application.
 4. Contents of an environmental assessment. Persons proposing actions requiring an environmental assessment shall prepare an environmental assessment of each proposed action and state whether the anticipated impacts constitute a significant adverse impact to coastal resources. An environmental assessment shall contain the following information:
 - a. title and executive summary;
 - b. identification, qualifications and credentials of the preparers and those consulted in preparing the assessment;
 - c. general description of the technical, economic, social, and environmental characteristics of the project, including an operational plan, if applicable, and all applicable drawings, maps and plans necessary to understand the project;
 - d. summary description of the affected environment, including a vicinity map and site plan;
 - e. identification and summary of potential adverse impacts to coastal resources;
 - f. source of funding, if federal monies are being used for the project, and any federal permits needed for which application has been made;
 - g. determination of whether alternatives or mitigation are feasible; and
 - h. findings and reasons supporting determination.
 5. Determination of significant impact or finding of no significant impact.
 - a. Board review of an environmental assessment. The applicant shall submit ten (10) copies of the environmental assessment to the Manager for distribution to the Board and public. At a regular or special meeting called by the Board, the Board shall review the environmental assessment and determine whether the proposed project meets the requirements of this chapter. Where necessary, the Board shall instruct the applicant to amend or furnish additional information

- necessary for the Board to reach a decision of adequacy of the assessment.
- b. Determination of significant impact or finding of no significant impact. A determination shall be made by the Board as to whether significant adverse impacts can reasonably
- (1) If measures have not been identified that will adequately avoid or mitigate the significant impacts a determination of significant impact shall be issued and a mitigation action plan shall be requested from the applicant.
 - (2) If no significant impact is found, or if impacts can be adequately avoided or mitigated, a finding of no significant impact shall be issued and considered in determining whether a land use permit should be approved.
- c. Decision-making Criteria
- (1) In determining whether an action may have a significant impact on coastal resources, the Board shall consider whether, every phase of a proposed action, the expected consequences, both primary and secondary, and the cumulative effects of the action comply with the standards and criteria as provided by this chapter.
 - (2) In most instances, an action shall receive a determination of significant impact on the environment if the action:
 - (a) Involves an irrevocable commitment to loss or destruction or alteration of any natural or cultural resource;
 - (b) Curtails the range of beneficial uses of the environment;
 - (c) Conflicts with any of the Territory's long-term environmental policies or goals, statutes, Rules, Amendments, court decisions, or executive orders;
 - (d) Affects public health or safety;
 - (e) Adversely affects the economic or social welfare of the community or Territory;
 - (f) Causes cumulative or secondary impacts that increase costs to the public, such as substantially increasing demands on public facilities;
 - (g) Involves a substantial degradation of environmental quality;
 - (h) Is individually limited but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
 - (i) Affects a threatened or endangered species or critical habitat;
 - (j) Detrimentally affects air or water quality or ambient noise levels; or
 - (k) Affects an environmentally sensitive area such as a floodplain, erosion-prone area, geologically hazardous area (including landslide hazard area), wetland, surface water or ground water, or coastal waters.
- d. Documentation of review and decision; public comment and notice. The Board shall document review of an environmental assessment of a proposed action for future reference, and shall make a determination of significant impact or a finding of no significant impact in writing. The actual determination shall be filed with the Manager and notice of availability

shall be published in a newspaper of general circulation in the Territory, soliciting comments from other agencies and the general public. A comment period of thirty (30) days shall follow the date of the first publication of the notice in a paper of general circulation in the Territory and shall be cited in the notice. Associated documents pertaining to this section or written public comments pertaining to these documents shall become public documents in the applicants file.

6. Addressing a determination of significant impact: mitigation action plan.

a. If the Board issues a determination of significant impact, the applicant shall prepare a mitigation action plan in consultation with the jurisdictional agencies that issued the determination of significant impact.

(1) Mitigation action plan means a document that describes the plan for implementing commitments made in an environmental assessment to mitigate adverse environmental impacts associated with a project, use or activity.

(2) Mitigation includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and

maintenance operation during the life of the action; and

(e) Compensating the impact by replacing or providing substitute resources or environments.

(3) Factors that the Board will consider when determining the acceptability of appropriate and practicable mitigation action plan include, but are not limited to:

(a) To be practicable, the mitigation must be available and capable of being achieved, considering costs, existing technology, and logistics in light of overall project purposes;

(b) To the extent appropriate, applicants should consider restoration, creation, replacement, enhancement, or preservation of the area requiring mitigation.

(c) Mitigation that may be appropriate and practicable includes, but is not limited to:

- i) reducing the size of the project;
- ii) establishing buffer zones to protect coastal resources; and
- iii) replacing the loss of coastal resources by creating, restoring, and enhancing similar functions and values.

b. The Board shall review the mitigation action plan and determine whether the plan is acceptable and whether a land use permit should be issued.

- (1) The record shall describe those mitigation measures to be undertaken which shall make the selected alternative environmentally acceptable.
- (2) The Board may discuss preferences among alternatives based on relevant factors including economic and technical considerations and Board agency statutory missions.
- c. The period for public review and comment on a mitigation action plan shall commence as of the date the notice of availability is published in a newspaper of general circulation in the Territory and shall continue for a period of thirty (30) days. Written comments to the Manager shall be forwarded to the Board and the applicant.

B. Supplemental statements

1. Change of circumstances. An environmental assessment or mitigation action plan that is accepted with respect to a particular action is qualified by the size, scope, location, and timing of the action. If there is a substantial change in the project or an amended land use permit in accordance with the provisions of this chapter, a supplemental statement shall be prepared and reviewed as provided in this section.
2. Project Notification and Review System determination of applicability.
 - a. A supplemental statement shall be warranted when:
 - (1) the scope of an action has been substantially increased,
 - (2) the intensity of environmental impacts may be increased,
 - (3) the mitigation action plan originally planned cannot be implemented, or

- (4) new circumstances or evidence may result in different or likely increased environmental impacts.
- b. The Board shall be responsible for determining whether a supplemental statement is required. This determination will be submitted to the Manager for written notification to the applicant that a supplemental statement shall be required for public review.
3. Contents. The contents of the supplemental statement shall be the same as required for an environmental assessment and a mitigation action plan and may incorporate by reference unchanged material from the same; however, the supplemental statement shall fully document the proposed changes from the original environmental assessment and mitigation action plan, discuss the process followed to address these changes, and discuss the positive and negative aspects of these changes.
4. Procedures. The requirements of consultation, filing public notice distribution, public review, comments and response, and acceptance procedures, shall be the same for the supplemental statement as prescribed for an environmental assessment.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0225 National Environmental Policy Act

- A. Applicability. When a proposed project, use or activity is be subject both to the National Environmental Policy Act, as amended, 42 USC §§ 4321 – 4370, as amended by Public Law 94-52 and Public Law 94-83; and this section, the following shall occur;
- B. The applicant shall notify the responsible federal agency and the Board of the situation.
- C. The National Environmental Policy Act requires that a draft environmental assessment or environmental impact statement be prepared by the responsible federal agency. When the

responsibility of preparing an environmental assessment or an environmental impact statement is delegated to a territorial agency, the Board shall cooperate with relevant agencies to the fullest extent possible to reduce duplication between the federal and territorial requirements. This cooperation shall include, where appropriate, a joint environmental impact statement or environmental assessment, with concurrent public review and processing at both levels of government, so that one document shall comply with all applicable laws.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0226 Federal Consistency

- A. Application. Federal actions (including direct federal activities and development projects, federal license or permit activities, and federal assistance activities) shall be conducted consistent the provisions of this chapter, if the action is reasonably likely to affect any land or water use of natural resource of American Samoa’s coastal zone, pursuant to the federal regulations, 15 C.F.R. part 930 and any federal consistency guidance provided by the American Samoa Coastal Management Program.
- B. American Samoa Coastal Management Program responsibility. The Manager is responsible for reviewing a federal agency’s consistency determination, an applicant’s consistency certification, and a territorial or local government’s application for financial assistance, and shall inform the Board of the undertaking and shall inform all other government agencies with relevant jurisdiction and permitting authority to apply the goals, purposes, policies and objectives of the Act and the provisions of this chapter; and applicable territorial air and water quality standards, rules, and regulations.
- C. Public comment. Public comments are invited on the American Samoa Coastal Management Program’s review of a federal agency’s consistency determination and an applicant’s consistency certification.
- 1. Direct federal activities. The American Samoa Coastal Management Program shall publish in a newspaper of general circulation in the Territory, a public notice in accordance with the provisions of this chapter on major projects, which will include: a summary of the proposal; state that the information submitted by the federal agency is available for public inspection; and that public comments may be made to the Manager within thirty (30) days of the first publication.
- 2. Federal license or permit activities. An applicant for a federal approval that is subject to the requirements of this chapter shall publish, on forms provided by the American Samoa Coastal Management Program, in a newspaper of general circulation in the Territory, a public notice which shall include: a summary of the proposal; state that the information submitted by the applicant agency is available for public inspection; and that public comments may be made to the Manager within thirty (30) days of the first publication.
- D. Territorial permits. If any federal action subject to this chapter also requires a land use permit or any other permit or approval from the Territorial Government, the project proponent shall prepare a land use permit application simultaneously with their federal consistency determination or certification.
- E. Listed Federal licenses or permits. The federal agency licenses and permits that the Manager shall review for consistency with the American Samoa Coastal Management Program are:
 - 1. Permits required from the Department of Commerce, Office of Ocean and Coastal Resource Management, Sanctuaries and Reserves Division, for activities within Marine Sanctuaries under 33 USC 1401-1444;
 - 2. Permits required from the Department of Defense, U.S. Army Corps of Engineers for:

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- a. Permits under sections 9 and 10 of the Rivers and Harbors Act, authorizing the construction of dams and dikes, and the obstruction of navigable waters.
 - b. Permits under section 4(F) of the Outer Continental Shelf Lands Act and amendments, authorizing artificial islands or fixed structures on the Outer Continental Shelf.
 - c. Permits under section 103 of the Marine Protection Research and Sanctuaries Act, authorizing the transport of dredged material for ocean dumping.
 - d. Permits under section 404 of the Clean Water Act, authorizing discharges of dredged and fill material into navigable waters (also subject to state certificate of reasonable assurance, under section 401 of the Clean Water Act).
3. Permits required by the Department of Energy and the Federal Energy Regulatory Commission for:
- a. Licenses required for non-Federal hydroelectric projects and primary transmission lines under section 3(II), 4(e), and 15 of the Federal Power Act, 16 USC 796(II), 797(e) and 808).
 - b. Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and liquid natural gas terminal facilities under section 7 (c) of the Natural Gas Act, 15 USC 717(f)(c)).
4. Permits required by the Environmental Protection Agency for:
- a. Permits required under section 402 of the 1972 Federal Water Pollution Control Act and amendments, authorizing discharge of pollutants into navigable waters. (Also, subject to state certificate of reasonable assurance, Clean Water Act section 401.)
 - b. Permits required under section 405 of the 1972 Federal Water Pollution Control Act and amendments, authorizing disposal of sewage sludge.
 - c. Permits for new sources or for modification of existing sources and waivers of compliance allowing extensions of time to meet air quality standards under section 112(c)(1) of the 1972 Clean Air Act.
 - d. Exemption granted under the Clean Air Act for stationary sources.
5. Permits and licenses required for the Nuclear Regulator Commission for the siting, construction, and operation of nuclear facilities.
6. Permits required for the Department of Transportation. United States Coast Guard for:
- a. Permits for construction of modification of bridge structures and causeways across navigable waters.
 - b. Permits for siting, construction, and operation of deep water ports.
 - c. If, in the future, it is found that the issuance of other types of federal permits and licenses cause direct and significant impact on coastal land and water resources, the Manager will either seek to review the activity as an unlisted activity pursuant to 15 CFR 930.54 and/or the Manager will seek to amend this list.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0227 Public Information and Education

- A. The American Samoa Coastal Management Program shall make information and educational materials available to the public and any Territorial agencies and officials. The

information shall, to the extent practicable, be in the vernacular appropriate for American Samoa and translated into the Samoan language. The information made available should address coastal resources management and conservation and the land use permitting process.

- B. The American Samoa Coastal Management Program shall provide ongoing technical assistance and education to villages to assist the villages in preparing and maintaining any local coastal management program or village ordinance in support of coastal management objectives.
- C. The American Samoa Coastal Management Program shall maintain a current series of island maps clearly showing the Territory’s Special Management Areas, wetlands, and other unique areas.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0228 Public Records

- A. The Department of Commerce shall retain and preserve the following records for a minimum of five (5) years following their receipt, or in the case of a land use permit, for five (5) years following the last agency action. After five (5) years, the following materials shall be safely archived:
 - 1. Land use permit applications and the action taken thereon.
 - 2. Board meetings and public hearing records, including all minutes, transcripts and audio or video tape recordings.
 - 3. The American Samoa Coastal Management Program materials, including all studies, guides, plans, policy statements, special reports, educational materials, memorandums of understanding, or other information obtained or prepared by the Department of Commerce or the American Samoa Coastal Management Program in order to provide public information and education or improve interagency coordination.

- B. All the American Samoa Coastal Management Program records on file at the Department of Commerce shall be available for public inspection during normal business hours. Minutes of Board meetings and transcripts or tapes of meetings or public hearings shall be made available upon request within thirty (30) days after the meeting or hearing, except where the disclosure would be inconsistent with the law. Reasonable fees and costs incurred in researching and reproducing the records may be charged.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

26.0229 Severability

If any provision of this chapter, or the application of any provision of this chapter to any person or any other instrumentality, shall be held invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

History: Rule 8-80 (Ex. Ord. 03-80); ASCMP Reg. (Ex. Ord. 07-88); Rule 2-97, eff 4 Aug 97.

TITLE 26 – CHAPTER 03 – ZONING REGULATIONS

Sections:

- 26.0301 Definition.
- 26.0302 Authority.
- 26.0303 Original jurisdiction.
- 26.0304 Appellate jurisdiction.
- 26.0305 Meetings and hearings.
- 26.0306 Election of chairperson.
- 26.0307 Attendance.
- 26.0308 Quorum.
- 26.0309 Building setback.
- 26.0310 Off-street parking.
- 26.0311 Unzoned areas-Watershed conservation zone.
- 26.0312 Site visits.
- 26.0320 Variances.
- 26.0330 Zoning of Harbor Area.
- 26.0340 Public participation.

Editor’s Note: The prior sections of this chapter were derived from Zoning Regs. 1.2 and 3, eff prior to 1975 and Rule 9-87, eff 8 Jun 87.

26.0301 Definition.

As used in this chapter the terms defined in 26.0303 A.S.C.A., shall have the meanings ascribed to them in that section and as supplemented, explained and further defined in this chapter.

History: Rule 5-88, eff 13 Jul 88.

26.0302 Authority.

The zoning board derives its authority from 26.0304 A.S.C.A., and pursuant to the zoning act at 26.0301 A.S.C.A., et seq. promulgated these rules.

History: Rule 5-88, eff 13 Jul 88.

26.0303 Original jurisdiction.

The board shall have original jurisdiction to zone the Territory as appropriate, to approve any and all zoning maps, to grant variances, to reconsider its decisions, to name streets, and to establish Planned Unit Developments (PUDs).

History: Rule 5-88, eff 13 Jul 88.

26.0304 Appellate jurisdiction.

The board shall have appellate jurisdiction where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of the building code or the zoning law.

History: Rule 5-88, eff 13 Jul 88.

26.0305 Meetings and hearings.

All regular meetings and hearings of the board shall be held in the Office of Development Planning, unless otherwise announced, every second Thursday of each month at 1:00 p.m.

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.

History: Rule 5-88, eff 13 Jul 88.

26.0306 Election of chairperson.

A chairperson shall be elected by the board at the meeting held on the second Thursday in January or as soon thereafter as possible.

History: Rule 5-88, eff 13 Jul 88.

26.0307 Attendance.

The board 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 trips

History: Rule 5-88, eff 13 Jul 88.

26.0308 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 one member still in attendance. No official business can be conducted without a quorum;

History: Rule 5-88, eff 13 Jul 88.

26.0309 Building setback.

(a) Purpose. The purpose of the building setback minimum is the protection of the health, safety, and general welfare of the people and the attainment of unity in the development of streets and buildings in American Samoa.

(b) Restriction.

(1) No person shall erect, construct, alter, modify, remodel, or move or cause to be erected, constructed, altered, modified, remodeled, or moved any building or portion thereof, within 35 feet of the center of any road or a minimum of 10 feet from the edge of the road, whichever is greater.

(2) "Person" includes, but is not limited to, the following: person, persons, firm, partnership, or corporation.

(3) "Road" includes, but is not limited to, the following: road, street, highway, alley, or any specific area which is used for vehicular traffic by the public, excluding private access roads so marked.

History: Rule 5-88, eff 13 Jul 88.

26.0310 Off-street parking.

(a) A garage or an off-street automobile parking area shall be provided at the time of the erection of any of the main buildings or structures hereafter specified, or at the time such main buildings or structures are altered, enlarged,

converted, or increased in capacity by adding dwelling units, guestrooms, floor area, or seats. The capacity required in garage or parking area shall be determined by the amount of dwelling units, guestrooms, gross floor area, as measured by square feet or seats so provided, and the garage or parking area shall be main-tamed thereafter in connection with such buildings or structures. In every such garage or parking area, there shall be an adequate driveway connecting each parking space with a street or alley.

- (b) The zoning board or its authorized representative shall determine which of the classifications set out in subsection (d) of this section are applicable to each building or assembly area.
- (c) Off-street automobile parking space being maintained in connection with any existing main building or structure shall be maintained so long as the main building or structure remains unless an equivalent number of such spaces are provided conforming to the requirements of this section; provided, however, that this section shall not require the maintenance of more automobile parking spaces than is required herein for a new building or structure identical to the existing building or structure, nor the maintenance of such space for any type of main building or structure other than those specified herein.
- (d) Uses- Minimum Number of Parking Spaces.

(1) Residential:

- (A) Single Family-1 space per unit
- (B) Multiple Residential-1 space per unit

(2) Commercial:

- (A) Retail Stores-1 space for every 300 sq. ft.
- (B) Banks 1 space for every 300 sq. ft.
- (C) Large Appliance/Furniture Sales-1 space for every 800 sq. ft.
- (D) Vehicle/Boat Sales-1 space for every 1000 sq. ft.
- (E) Offices-1 space for every 400 sq. ft.

- (F) Personal Services-1 space for every 400 sq. ft.
- (G) Barber/Beauty Shops-1 space for every chair
- (H) Laundromats-1 space for every 3 washers
- (I) Gas Station/Auto Repair Garage-1 space for every service bay
- (J) Restaurants/Bars, etc.-1 space for every 100 sq. ft.
- (K) Pool Hall-1-space for every table
- (L) Hotels/Motels-1 space for every 3 units
- (M) Wholesale Businesses-1 space for every 1000 sq. ft.
- (N) Home Occupations-1 space in addition to that required for the residence

(3) Industrial:

- (A) Manufacturing-* 1 space for every 1000 sq. ft.
- (B) Warehousing-* 1 space for every 1000 sq. ft.
- (C) Mechanical/Machinery Repair-* 1 space for every 1000 sq. ft. *(or 1 space for every 4 employees, whichever is greater.)

(4) Public Buildings:

- (A) Churches-1 space for every 500 sq. ft.
- (B) Schools:
 - (i) Elementary and high Schools-1 space for every 2 classrooms
 - (ii) Colleges-1 space for every classroom
- (C) Public Assembly Areas-1 space for every 10 seats (D) Other Public Buildings-1 space for every 500 sq. ft.

(e) Parking spaces and driveway construction shall be in conformance with the following requirements:

(1) Parking space specifications:

- (A) All spaces are to be a minimum of 9 ft. wide by 18 ft. long.
- (B) Backup distances are to be 24 ft. for 90 degree parking, 18 ft. for 60 degree parking, and 15 ft. for 45 degree parking.
- (C) All other configurations to be approved by the Highway Division.
- (D) Maneuvering Requirements:
 - (i) Except for approved parallel spaces, parking spaces shall be designed so that a vehicle can enter a space in one forward motion, and exit in one rear and one forward motion.
 - (ii) Parking space or lot design which requires that vehicles back into the main highway shall not be permitted. On-secondary roadways, backing into the street may be permitted upon approval of the Highway Division.
- (E) All parking lots containing 5 or more parking spaces shall be paved and striped.

(2) Driveway Specifications:

- (A) Residential driveways shall have a minimum throat width of 10 ft. and a maximum throat width of 20 ft.
- (B) Commercial driveways that are one-way shall have a minimum throat width of 12 ft. and a maximum throat width of 20 ft. Two way driveways shall have a minimum throat width of 22 ft. and a maximum throat width of 35 ft.
- (C) All driveways shall be at right angles to the roadway unless otherwise

approved by the Highway division of the Department of Public Works. All driveway configurations, radius returns and sight distance are further to be approved by the Highway Division.

History: Rule 5-88, eff 13 Jul 88.

26.0311 Unzoned areas-Watershed conservation zone.

All land area not previously zoned on Tutuila American Samoa, is declared to be in the Water-shed conservation zone as defined by Chapter 26.03 A.S.C.A.

History: Rule 5-88, eff 13 Jul 88.

26.0312 Site visits.

After a full evidentiary hearing before the board, a site visit to any location under consideration for a variance may be made by the board and used in the final decision of the board regarding the variance.

History: Rule 5-88, eff 13 Jul 88.

26.0320 Variances.

The board may grant a variance from the regulations applicable to a zone if the board finds that the variance is necessary to make possible a reasonable use of land or a building or that refusal of a variance would impose a hardship and that the variance would not be injurious to the neighborhood.

For this section an “interested party” shall be any person who appears before the board relative to an application for a variance either in writing or in person or by an agent or attorney.

Pursuant to 26.0340 A.S.C.A., the board establishes procedures for application, public hearings and conditions:

- (a) Application shall be made for a variance on a form prescribed by the board. The application shall contain the following information as deemed necessary by the board, and no application shall be heard which does not contain this information filed in advance, unless waived by the board:

- (1) Name, address and telephone number(s) of applicant.

- (2) Description of property, including legal description, address, common means of identification and map showing location with common landmarks.
 - (3) Map of (the boundaries of the parcel and each separate lot or parcel within 300 feet of the exterior boundaries thereof; together with a list of the names and mailing addresses or the last known owners of public needed, tenant or matai.
 - (4) A statement of the reason(s) for a variance.
 - (5) A scale drawing of the site showing the location of any existing or proposed streets, alleys, property lines, uses, structures, driveways, pedestrian walks, off-street parking and off-street loading facilities and landscaped areas.
 - (6) A copy of the lease or proof of intention to lease, or proof of ownership or use.
 - (7) A typical floor plan for each floor showing work areas, bathrooms, water and sewage facilities, storage area(s), and other uses with necessary measurements.
 - (8) Such other information, plans, maps, diagrams and information that may be necessary to assure full presentation of pertinent facts for the record to assist the board in making a determination.
- (b) The application must be accompanied by a receipt showing that the application fee of \$10.00 has been paid.
- (c) The board shall hold a public hearing within 45 days after acceptance of application. Notice of the time and place and purpose of each public hearing shall be given as follows:

At least 10 days prior to the date set for the hearing, and not before 20 days prior to that date, the administrator shall see that a notice thereof is mailed or hand delivered by the applicant to each property owner, tenant or matai, as the case may be, whose name and address appears on the list accompanying the application as required by subsection (a)(4) above. The notice shall be on a form prescribed by the board and give the date,

time and place of the hearing, the name of the applicant, the request of the application, the identification of the subject property and such other information as may be prescribed by the board in any individual case. In certain cases, such as more than 10 property owners or tenants involved or unknown owners, the board may require that in lieu of mailing or hand delivery of notices that a notice shall also be published by the applicant in a newspaper and on the radio at least once a week for 3 weeks prior to such meeting, and the applicant shall also post a notice at the Court House and at a location close to the subject property at least 21 days prior to the hearing.

- (d) The board may grant the variance provided that it is established by evidence presented to the board that the proposed building or use is in accordance with the foregoing provisions of the zoning law and further that the following qualifications have been met:
- (1) The location of the building or use is in the general neighborhood area and does not place on undue burden on existing transportation, utilities, education, water, sewage and service facilities in the vicinity.
 - (2) The site is of sufficient size to accommodate the proposed building or use together with all yards, open spaces, walls and fences, parking and loading facilities, landscaping and such other provisions required by statute or by this chapter.
 - (3) The site will be served by streets or alleys of sufficient capacity to carry the traffic generated by the proposed building or use.
 - (4) The proposed building or use, if it complies with all conditions on which approval is made contingent, will not adversely affect other property in the vicinity or the general welfare of the territory,
- (e) The board may deny the application for a variance.
- (f) In approving an application for a variance, the board may require higher standards of site development than listed for such use in Chapters

03 or 05 Title 26 A.S.C.A., and make approval contingent on the acceptance and observance by the applicant of specified conditions relating to but not limited to, the following considerations:

- (1) Conformity to plans and drawings submitted with the application;
 - (2) The provision of open spaces, buffer strips, screen walls, fences, hedges and landscaping;
 - (3) The volume of traffic generated, vehicular movements within the site, and points of vehicular ingress and egress;
 - (4) Performance characteristics related to the emission of noise, vibration, and other potentially dangerous or objectionable elements;
 - (5) Limits in time of day for the conduct of specified activities;
 - (6) Guarantees as to compliance with the terms of the approval.
- (g) Within 30 days of the close of the hearing on, or upon conclusion of investigation into, the application the board shall make a written finding and decision which shall be served on the applicant and all interested parties who in writing request a copy.
- (h) Within 10 days of receipt of the decision the applicant or any other interested party may file a written motion for reconsideration stating the reasons for the reconsideration if there is new evidence or additional factors to support a reconsideration hearing.
- (i) On a motion to reconsider the board may affirm, reverse or modify its decision, provided if the board reverses or modifies its decision it must make new findings pursuant to subsections to (d) and (f) above.
- (j) Unless renewal of a variance is requested, it shall lapse 180 days after its issuance unless prior to that date a business license has been issued or if a building is to be constructed, reconstructed, or modified, a building permit has been issued, and construction is commenced and diligently

pursued. A request for a renewal must be accompanied by a statement under penalty of perjury by the applicant or his authorized agent stating the reason no business license or building permit has been issued and/or the reason no construction has been commenced. A variance may be renewed by the board for a period of 30 days.

- (k) On violation of any of the provisions of this or any other applicable rules by a holder of a variance or on failure of the holder to comply with conditions of a variance, the variance shall be suspended automatically. A hearing shall be called within 30 days, and at the hearing the board must be satisfied that either the violation has been discontinued or the condition met, otherwise the variance will be revoked.

History: Rule 5-88, eff 13 Jul 88.

26.0330 Zoning of harbor area.

The Harbor Area is hereby zoned in accordance with the attached map and plan.

History: Rule 58, eff 13 Jul 88.

26.0340 Public Participation

- (a) All persons addressing the board 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 [ASBA does not have the remaining parts of this chapter].

History: Rule 5-88, eff 13 Jul 88.

TITLE 26 – CHAPTER 04 – FLOOD HAZARD PROTECTION

Sections:

- 26.0401 General
- 26.0402 Authority
- 26.0403 Definitions
- 26.0404 Special Flood Hazard Areas Designate – Map Adopted
- 26.0405 Water and Sewer Systems
- 26.0406 Enforcement Authority
- 26.0407 Development permits – Flood damage minimization – Data Development

- 26.0408 Rulemaking Authority
- 26.0409 Cooperation of Executive Branch Agencies

26.0401 *General*

[...] has been vested with authority to designate uses in the coastal zone subject to management and to review, comment upon, approve, or disapprove all applications for permits for uses, developments, or activities which may in any way whatsoever impact the American Samoa coastal zone. The responsibilities and authorities of the territory which relate to flood protection and to coastal zone management are interrelated and compatible and can be administered and implemented together most effectively and efficiently. Thus, it is in the best interest of the territory that the policies, rules, and procedures of the Territory be administered and implemented in the most effective and efficient manner.

History: Rule 6-81 (Ex. Ord. 3-1981), eff 17 Jun 81, § 1.

26.0402 *Authority.*

The executive order codified in this chapter is issued under the authority of Section 6 of Article IV of the Revised Constitution of American Samoa.

History: Rule 6-81 (Ex Ord. 3-1981), eff 17 Jun 81, § 2.

26.0403 *Definitions.*

- (a) Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the same meaning they have in common usage and so as to give this chapter its most reasonable interpretation and application.
- (b) As used in this chapter:
 - (1) “area of special flood hazard” means the land within the territory subject to a 1% or greater chance of flooding in any given year. This land is identified as Zone A on Flood Hazard Boundary Map No. 600001, dated 13, Dec 77, and amendments thereto.
 - (2) “development” means any manmade change to improved or unimproved real

estate including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations; eperal ind temporary condition of partial or complete inundation of normally dry land areas from:

- (A) the overflow of inland or tidal waters;
- (B) the unusual and rapid accumulation or runoff of surface waters from any source; or
- (C) mudslides (i.e., mudflows) which are proximately caused or precipitated by accumulations of water on or under the ground. It also means the collapse or subsidence of land along the shore of a body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water accompanied by a severe storm, or by an unanticipated force of nature, such as a flash-flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in the inundation of normally dry land areas from the overflow of inland or tidal waters;

- (4) "flood proofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures, including utility and sanitary facilities, which would preclude the entry of water. Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy;
- (5) “habitable floor” means any floor used for living which includes working, sleeping, eating, cooking, or recreation or combination thereof. A floor used only for storage purposes is not a “habitable floor”;
- (6) “100-year flood” means the condition of flooding having a 1% chance of annual occurrence;

- (7) “regulatory flood elevation” means the water-surface elevation of the 100-year flood;
- (8) “structure” means walled and roofed structure, including a gas or liquid storage tank that is principally above the ground, including but without limitation to buildings, factories, sheds, cabins, and other similar uses,
- (9) “substantial improvement” means any repair; reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:
 - (A) before the improvement is started; or
 - (B) if the structure has been damaged and is being restored, before the damage occurred, substantial improvement is considered to occur when the 1st alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any alteration to comply with existing territorial health, sanitary, building, or safety codes or regulations as well as structures listed in national or territorial registers of historic places.

History: Rule 6-81 (Ex. Ord. 3-1981), eff 17 Jun 81, § 3.

**26.0404 Special flood hazard areas designated-
Map adopted.**

Flood hazard Boundary Map No. 600001, dated 13 Dec 77, and any amendments thereto, is designated as the official map to be used in determining those areas of special flood hazard in the territory.

History: Rule 6-81 (Ex. Ord. 3-1981), eff 17 Jun 81, § 4.

26.0405 Water and sewer systems.

All new and replacement water and sewer systems in the territory shall be constructed to eliminate or minimize infiltration by or discharge into floodwaters, and all on-site waste disposal systems

will be designed to avoid impairment or contamination during flooding.

History: Rule 6-81 (Ex Ord. 3-1981), eff 17 Jun 81, § 5.

26.0406 Enforcement authority.

In conjunction with its authority authorized and directed under 26.02 of this code relating the coastal zone management program of the territory of American Samoa, the office of development planning is vested with the added authority relating to flood protection, and is director, to enforce all the provisions of this chapter.

History: Rule 6-81 (Ex. Ord. 3-1981). eff 17 Jun 81, § 6.

**26.0407 Development permits-Flood-damage
mimimization-Data development.**

- (a) As part of its review of applications for permits for development which impact the American Samoa coastal zone, the office of development planning shall determine if the site of the proposed development is reasonably safe from flooding and that all necessary permits have been received as required by federal or territorial law.
- (b) In reviewing all applications for new development, the office of development planning shall:
 - (1) obtain and review and reasonably utilize, available, any regulatory flood elevation data from federal, territorial, or other sources until such data is provided by the Office of Insurance and Mitigation of the Federal Emergency Management Agency in a flood insurance study; and will require within areas designated as Zone A on the official map that the floor elevation of new residential structures be elevated not less than 18 inches in the absence of regulatory flood elevation data, or to or above the regulatory flood elevation, if established, and that the 1st-floor elevation of nonresidential structures be floodproofed;
 - (2) require the use of construction materials and utility equipment that are resistant to flood damage;

- (3) require the use of construction methods and practices that will minimize flood damage; and
 - (4) require that structures be designed or anchored to prevent the flotation, collapse, or lateral movement of the structure or portions of the structure due to flooding.
- (c) In reviewing all applications for subdivisions, the office of development planning shall assure that:
- (1) all such proposed developments are consistent with the need to minimize flood damage;
 - (2) subdivision proposals and other proposed new development greater than 5 acres or 50 lots, whichever is lesser, include within such proposals regulatory, flood elevation data in areas designated Zone A;
 - (3) adequate drainage is provided so as to reduce exposure to flood hazards; and
 - (4) all public utilities and facilities are located so as to minimize or eliminate flood damage.
- (d) In carrying out its authority under the coastal zone management program and here under, the office of development planning shall have the following additional authority to:
- (1) delineate or, at the request of the Office of Insurance and Mitigation, to assist that office to delineate the limits of the areas having special flood hazards on available local maps of sufficient scale to identify the location of building sites;
 - (2) provide information to and cooperate with the Office of Insurance and Mitigation and all, other federal, territorial, village, and private entities which undertake to study, survey, map, and identify floodplain trees; and
 - (3) maintain for public inspection and to furnish upon request a record of elevations (in relation to mean sea level) of the lowest floor (including basement) of all new or

substantially improved structures located in the special flood-hazard areas.

History: Rule 6-81 (Ex. Ord. 3-1981), eff 17 Jun 81, § 7.

26.0408 Rulemaking authority.

The office of development planning is authorized to propose to the Governor for his promulgation, pursuant to the Administrative Procedures Act, 4.1001 A.S.C.A., et seq., rules as it from time to time deems necessary and proper for the effective implementation and administration of this chapter and the policies hereunder established.

History: Rule 6-81 (Ex. Ord. 3.1981). eff 17 Jun 81, 18.

26.0409 Cooperation of executive-branch agencies.

All departments, offices, agencies, and instrumentalities of the ASG, and all officers and employees thereof, shall cooperate to the fullest extent possible in assisting the office of Development Planning to carry out the responsibilities and duties of this chapter and in flood plain management.

History: Rule 6-81 (Ex. Ord. 3.1981), eff 17 Jun 81, § 9.

TITLE 26 – CHAPTER 05 – ENERGY EFFICIENCY

Sections:

- 26.0501 Energy efficiency need and policy.
- 26.0502 Authority.
- 26.0503 Federal mandate.
- 26.0504 ASTIRAE efficiency standard adopted.
- 26.0505 Exemptions-lighting-efficiency applicability.
- 26.0506 Compliance of plans or specifications.
- 26.0507 Certification of compliance.

26.0501 Energy efficiency need and policy.

Because of the total dependence of the territory of American Samoa on imported oil and the increasing cost-impact of this dependence, there exists a serious need to develop alternate energy sources and at the same time to embark upon a concerted effort to reduce waste in the consumption of energy. Major public and private facilities have been shown to have

a significant-impact on our territory’s consumption of energy. The cost of the energy consumed by such facilities has been substantial and is expected to continue its upward spiral. Therefore, energy conservation practices will be adopted for the design, construction, and utilization of such facilities to realize significant reduction in energy use and energy cost, while maintaining efficient operation and services.

The purpose of this chapter is it require the inclusion of energy efficiency standards in building codes.

History: Rule 6-78 (Ex Ord 2-1978) eff 6 Feb 79. § 1.

26.0502 Authority.

The rules codified in this chapter are adopted under the authority of Section 6 of Article IV of the Revised Constitution of American Samoa.

History: Rule 6-78 (Ed. Ord. 2-1978). eff 6 Feb 79. § 2.

26.0503 Federal mandate.

The rules codified in this chapter are adopted in order to comply with the Federal Energy Policy and Conservation Act, PL 94-163.

History: Rule 6-78, (Ex. Ord. 2-1978), eff 6 Feb 79. § 3.

26.0504 ASHRAE efficiency standard adopted.

The lighting, equipment, and thermal efficiency standards developed by the American Society of Heating, Refrigeration, Air Conditioning Engineers, Inc., known as ASHRAE standard 90-75, are adopted and shall be construed as part of the building code as adopted by 26.0501 A.S.C.A., and such other building codes as may be adopted in the territory. These lighting, equipment, and thermal efficiency standards shall be applied to the design and construction of new public buildings. Thermal efficiency standards shall be applied to any modifications of existing or new public buildings, except as otherwise specifically provided in this chapter. These standards shall have the full force and effect of law.

History: Rule 6-78 (Ex. Ord 2-1978). eff 6 Feb 79, § 4.

26.0505 Exemptions-Lighting-efficiency applicability.

Exemptions to scope of the standards provided for in 26.0504 are as follows:

- (a) New buildings and/or modifications there or whose peak design rate of energy usage is less than 1 watt per square foot of floor area for all purposes; and
- (b) Those buildings which are not mechanically cooled;
- (c) Requirements for heated buildings;
- (d) Any historical building or property eligible for, nominated to, or entered on the national register of historical places pursuant to the National Historic Preservation Act of 1966, PL 89-665, or the American Samoa register of historic places;

The lighting efficiency standards shall apply to all public buildings with over 10,000 square feet of floor space whose rate of energy usage is greater than 2.5 watts per square foot.

History: Rule 6-78 (Ex. Ord. 2-1978), eff 6 Feb 79, § 5.

26.0506 Compliance of plans or specifications.

No official of the ASG who is charged with the enforcement of laws or ordinances relating to the construction or alteration of buildings or structures, shall approve any plans or specifications that incorporate design and construction details and standards for cooling systems for new construction, renovations, or additions to existing structures that are less stringent than the energy efficiency building standards adopted by this chapter.

History: Rule 6-78 (Ex. Ord. 2-1978), eff 6 Feb 79, § 6.

26.0507 Certification of compliance.

When applications are made for building or construction permits, certification of compliance with the energy efficiency building standards where cooling systems are included shall be evidenced by the written statement, “These plans comply with current energy conservation standards for construction”, placed on, or annexed to, all plans and specifications in connection therewith, together with the authorized seal of United States registered

engineer holding an unexpired certificate indicating that he is qualified in the mechanical branch unless the building or structure for which the plans or specifications are submitted is under 26.0505.

History: Rule 6-78 (Ex. Ord. 2-1978). eff 6 Feb 79, § 7.

END OF TITLE 26 – ENVIRONMENTAL
SAFETY AND LAND MANAGEMENT

TITLE 27 – COMMERCE CODE

Chapters:

- 01 Business Licenses
- 02 Industrial Park Commission
- 03 Community Development Block Grants
- 04 Customs Regulations
- 05 Alcoholic Beverage Control
- 06 Weights and Measures
- 07 Agriculture Produce Board
- 08 Farm Subsidy Program Rules and Regulations
- 09 Consumer Protection

TITLE 27 – CHAPTER 01 – BUSINESS LICENSES

Sections:

- 27.0101 Authority.
- 27.0102 Applicability-Commission review required when.
- 27.0103 Appearance before commission-Recommendation-Appeal
- 27.0104 Recommendation basis-Objectives.
- 27.0105 Information required-Deposit.
- 27.0106 Confidentiality.
- 27.0107 Classification of business-Separate licenses.

27.0101 Authority.

The rules codified in this chapter are issued pursuant to the authority granted the territorial planning commission under Chapter 27.02 A.S.C.A.

History: Rule 3-77. eff 14 Sep 77, § 1.

27.0102 Applicability-Commission review required when.

- (a) Any applicant who wishes to operate a business in the territory who is not an American Samoan as defined by the A.S.C.A., shall appear before the territorial planning commission, following referral to the commission by the Governor, for review of and subsequent recommendation on the business license application.
- (b) A partnership in which any interest is owned by a non American Samoan must appear before the commission for review of a subsequent

recommendation on the business license application.

- (c) A corporation with majority capital stock held by non Samoans must appear before the commission for review of and subsequent recommendation on the business license application.

History: Rule 3-77. eff 14 Sep 77, § 2.

27.0103 Appearance before commission-Appeal.

- (a) Upon submission of a business license application, and upon referral by the Governor to the executive secretary of the territorial planning commission, the applicant’s name will be placed on the agenda of the next meeting of the commission. The applicant will be informed by the secretary regarding the time and place of the meeting and will be asked to appear before the commission to present his business proposal.
- (b) The recommendation of the commission, following the presentation of the applicant, will be forwarded in writing to the Governor with a copy to the applicant.
- (c) Should the commission deny the issuance of a license, the applicant has the right to appeal the decision to the governor of American Samoa. Since under present law the Governor cannot reverse a denial for license from the commission, the commission will, upon referral from the Governor, consider such appeals where there are special circumstances or conditions not previously considered or presented to the commission.
- (d) The Governor, under authority of the licensing laws may reverse a positive recommendation of the commission and withhold license approval.

History: 3-77, eff 14 Sep 77, § 3.

27.0104 Recommendation basis-Objectives.

- (a) A foremost factor among the priorities which influence recommendations of the commission is the economic contribution, or benefit to the economy of American Samoa, proposed by a new business. Economic contribution means the direct and indirect benefits received by the

community through establishment of the proposed business. Such benefits include employment opportunities to American Samoan residents, potential ASG tax revenues, payroll, capital investments, etc.

- (b) The objectives for license review by the commission are not only to promote and establish a more viable private sector economy through establishment of new industrial and commercial activity, but as well to provide an atmosphere in which American Samoan entrepreneurs may enter into business activity in keeping with their increasing capacity to invest in and manage such activities.
- (c) The commission recognizes that competition is necessary in a free enterprise system and it will be constantly alert that licensing restrictions not create an overly protective altitude which enables establishment of monopolies, regardless of ownership. The welfare of the American Samoan people will not be sacrificed in pursuing the application of the Economic Development Act and the licensing law.

History: Rule 3-77, eff 14 Sep 71, § 4.

27.0105 Information required-Deposit.

- (a) New businesses that are majority-owned by non-American Samoans must submit certified financial statements for each non-American Samoan principal.
- (b) Industries seeking establishment in the territory, must transmit a formal business proposal to the commission.
- (c) A license application form must be filled out by each applicant.
- (d) It is to the advantage of the applicant to submit any relevant documents which would solidify his proposal.
- (c) The commission may at times request a sum of money to be placed in escrow to offset unanticipated payroll deficit and/or other liability.
- (f) The commission shall have the authority to demand additional information if original data submitted is not satisfactory.

History: Rule 3-77, eff 14 Sep 7, § 5.

27.0106 Confidentiality.

The commission recognizes that in assessing the merits of business proposals and license applications, it is necessary for applicants to submit information which is of a confidential nature and which may conceivably benefit competitors of the proposed business. The commission thus recognizes the confidentiality of such submittals and will restrict review of same to members of the commission and such officials of government as are necessary.

History: Rule 3-77, eff 14 Sep 77, § 6.

27.0107 Classification of business-Separate license.

A license must be obtained for each separate business activity as defined in the classification set out in this section. No single classification includes any other unless specifically referenced .

- (a) Retail outlets: covers retailing only of any merchandise not covered in any of the following classifications;
- (b) Wholesale outlet: covers wholesaling only of any merchandise not covered in any of the following classifications;
- (c) Professional services: includes doctors, lawyers, architects, engineers, surveyors, beauticians, accountants, and all other activity which provides a service in which the practitioner is licensed, controlled, or qualified by passing examinations or by formal acceptance of qualifications by a regulatory agency;
- (d) Service organization: includes, with the exception of those in subsection (c) of this section, all other businesses where a fee is paid for service rendered. Transportation is also covered under this caption;
- (e) Hotels and restaurants;
- (f) Bars, nightclubs, discotheques, taverns, cocktail lounges;
- (g) Package liquor sales: includes all outlets, not otherwise licensed to sell alcoholic beverages, who sell packaged alcoholic beverages across the counter;

- (h) Automotive sales and services: includes sale of new and used motor vehicles and the provision of repair and maintenance services;
- (i) Manufacturing/processing: includes all activities which involve the fabrication, assembly, finishing, processing, or preprocessing of organic or inorganic substances into any product which is intended for wholesale or retail distribution within or outside of the territory of American Samoa. Each such license must specify the product (s);
- (j) Printing and publication: includes any performance of the titled activities which is for monetary compensation.

History: Rule 3-77, eff 14 Sep 77, § 7.

TITLE 27 – CHAPTER 02 – INDUSTRIAL PARK COMMISSION

Sections:

- 27.0201 Authority.
- 27.0202 Applicability-Scope.
- 27.0203 Accounting.
- 27.0204 Legal affairs-AG opinion requests.
- 27.0205 Membership-Chairman-Vacancies.
- 27.0206 Development bank responsibilities-Chairman duties-Call for meeting.
- 27.0207 Appeal hearings-Meetings procedure-Quorum.
- 27.0208 Lease standards.
- 27.0209 Tenant-selection guidelines.
- 27.0210 Purpose-Space distribution-Interagency cooperation.

27.0201 Authority.

The rule codified in this chapter is issued pursuant to the authority granted the industrial park commission under 4.1002 A.S.CA.

History: Rule 4-77, eff 14 Sep 77, § 1.

27.0202 Applicability-Scope.

The rules in this chapter shall govern all internal procedures of the industrial park commission (hereinafter called the “commission”) established by General Memorandum 15-75, regarding the direction and management of the American Samoa Industrial

Park (hereinafter called the “park”) located at Tafuna, Tutuila, American Samoa, and shall establish guidelines for all dealings with tenant, the public, and other branches of government.

History: Rule 4-77, eff 14 Sep 77, § 2.

27.0203 Accounting.

The financial affairs of the park and the commission shall, be established and maintained in an Enterprise Fund within the ASG financial management system (hereinafter called the “fund”) regarding all revenues and disbursements. The treasurer shall maintain the accounts as Fund 435 and shall maintain proper records of expenditures charged to MACC 740357. He shall also render advice and assistance regarding matters pertaining to the fund.

History: Rule 4-77, eff 14 Sep 77, § 3.

27.0204 Legal affairs-AG opinion requests.

The attorney general of American Samoa shall render legal advice and assistance to the commission. When a formal opinion on any matter is sought, a written request should normally be submitted by the chairman at least 2 weeks before the opinion is required.

History: Rule 4-77, eff 14 Sep 77, § 4.

27.0205 Membership-Chairman-Vacancies.

- (a) Members of the commission shall be the directors, respectively, of the office of development planning, office of material management, department of public works, department of agriculture and office of industrial development, the treasurer, attorney general, president of the development bank of American Samoa, and 2 members of the Legislature. The president of the Senate and speaker of the House of Representatives shall each select 1 member of the Legislature.
- (b) The chairman shall be elected from and by the members every 2 years, on the odd year, at the July meeting or the meeting next following the month of July. The chairman shall vote only in the case of ties.
- (c) Vacancies shall be filled for the remainder of term.

History: Rule 4-77, eff 14 Sep 77, § 5.

**27.0206 Development bank responsibilities-
Chairman duties-Call for meeting.**

- (a) The general administration of the business of the commission shall be as spelled out in this section.
- (b) The development bank shall have responsibility for administration of the affairs of the park and the fund, between meetings.

This interim management shall continue until there is sufficient economic base to enable the hiring of a full-time manager of the park. The development bank shall execute policy decisions of the commission between meetings, and as guided in subsection (c) of this section.

- (c) The development bank shall, without limitation, collect rents, send tenants' notices, preserve property, handle correspondence of all matters needing immediate attention, and such usual matters between meetings that require business judgment ordinarily reposed in a project manager. Copies of all written materials and memoranda of all significant discussions shall be filed as soon as possible with the chairman.
- (d) Nonbinding negotiations of business matters may be handled by the development bank between meetings of the commission.

However, all contracts, binding business decisions, and matters of policy shall be decided, either in advance or by ratification, by the commission.

- (e) The chairman shall schedule meetings, send meeting notices, keep records and minutes of meetings, record all policy decisions and results of hearings, and render consultation do the development bank, as needed. A majority of the commission may always call a meeting or hearing, with 10 days, advance written notice to members and parties concerned.

History: Rule 4-77, eff 14 Sep 77, § 6.

**27.0207 Appeal hearings-Meeting procedure-
Quorum.**

- (a) Any person believing he is aggrieved by any action or inaction of the commission, or representative thereof, may request a hearing and

review by the full commission. All actions and decisions of the commission or its representatives shall be deemed final and binding within 10 days of written notice thereof unless such a hearing is requested. Hearings shall be as scheduled by the chairman. Meetings shall be at least quarterly, held on the 2nd Tuesday of the 1st month of each quarter and additionally as called by the chairman.

- (b) Hearings may be formal or informal. All requests for a hearing will be treated as informal unless the request is specific to request a formal hearing. An informal hearing shall take place, first, before any member of the commission designated by the chairman, who shall obtain the facts and issues in dispute, and report to the full commission. The person in an informal proceeding need not be heard by the full commission unless recommended by the investigating member.
- (c) Formal hearings shall not be held with the formality of court proceedings. If any person desires recording or transcription of the proceedings, it shall be their obligation and expense to provide the same. Where a recording or transcript is made, it must be transcribed and a free copy given to the commission within 30 days. If no record is made or stenographic notes taken, the minutes ordered and kept by the chairman or his designee are conclusively presumed as an accurate record of all that took place. If a transcript is not provided within 30 days, the commission may determine the matter against the person requesting the recording or stenographic record.
- (d) The chairman shall determine, subject to the majority vote of the commission if any member disagrees, the procedures of all hearings and meetings, as closely as possible to the efficient practice of a private business corporation. The chairman shall allow all persons reasonable, but not excessive, time to present their views, question the factual support for decisions, and present their factual data. The chairman shall determine what records of the commission are public and what records relate to confidential

and sensitive business matters that are not public records.

- (e) Five members of the commission constitute a quorum. A majority of those present with a quorum determine a favorable vote.

History: Rule 4-77, eff 14 Sep 77, § 7.

27.0208 Lease standards.

The commission shall adopt and amend, from time to time, standards for leases, and such standards shall be available at the office of the chairman for inspection by the public.

History: Rule 4.77, eff 14 Sep 77, § 8.

27.0209 Tenant-selection guidelines.

The commission shall adopt and amend, from time to time, guidelines for selection of tenants, and such guidelines shall be available at the office of the chairman for inspection by the public.

History: Rule 4-77, eff 14 Sep 77, § 9.

27.0210 Purpose-Space distribution-Interagency cooperation.

- (a) All decisions shall be made with a view toward the purpose for which the park was developed, which is to provide a fully serviced area in the territory of American Samoa in which prospective manufacturing and related service establishments. Park space will be provided primarily to international firms which are committed to the establishment of manufacturing facilities in American Samoa,
- (b) Without setting rigid and inflexible standards, the commission shall seek to devote normally accepted distribution in industrial parks to manufacturing and related service establishments.
- (c) The commission desires to cooperate fully with the office of industrial development and the economic development commission to make a reality of the above goals for American Samoa. Particularly, the commission shall further consider the standards of 27.0207 (b) A.S.C.A., and rules thereunder, and the Environmental Quality Act, 24.0101 A.S.C.A., et seq.

History: Rule 4-77, eff 14 Sep 77, § 10.

ITLE 27 – CHAPTER 03 – COMMUNITY DEVELOPMENT BLOCK GRANTS

Sections:

- 27.0301 Administration.
 - 27.0302 DPO director duties-Program monitoring, compliance enforcement.
 - 27.0303 Rulemaking-DPO director authority.
 - 27.0304 Payment-request approval required.
 - 27.0305 Environmental review certifications.
 - 27.0306 Cooperation of ASG agency and personnel.
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1. Editor's Note: The following preceded § 1 of Ex. Ord. 5-180:

"Whereas, Title 1 of the Housing and Community Development Act of 1974 (Pub. Law 93.383,42 U.S.C.5301) as amended, establishes the Community Development Block Grant (CDBG) Program, a federal program to assist localities to plan and carry out programs for community and economic development for the principal benefit of low and moderate income persons, for the prevention of slums and blight, and for meeting other community development needs having a particular urgency; and

Whereas, the Territory of American Samoa is a participant in the CDBG Program and has received grants of funds from the United States Department of Housing and Urban Development (HUD) for the purpose of carrying out such a CDBG Program in the Territory; and

Whereas, the said Housing and Community Development Act of 1974, as amended, other applicable federal laws and numerous federal agency regulations, including but not limited to rules and regulations governing the CDBG Program, the administration of federal grants and environmental matters, create certain requirements which must be carried out by the Territory under its CDBG Program; and

Whereas, the Territory has been advised by HUD that responsibility and authority for the administration of the CDBG Program of the Territory should be vested in a single agency of the Territory; and

Whereas, HUD has recommended and the Governor has concurred that the Office of Development Planning should be the agency of the American Samoa Government vested with the responsibility and authority for administering the CDBG Program; and

Whereas, it is the policy of the Territory to continue to carry out a CDBG Program and to improve its capacity to effectively and efficiently administer the same, in accordance, with all federal laws and regulations; and

Whereas, the goals of the CDBG Program of the Territory are to improve the quality of life of the people of the Territory, to improve the service delivery systems of the Territory and of the villages, to broaden and increase the tax base of the Territory, to encourage local capital formation and to foster the development and expansion of industry and commerce in order to achieve, the economic independence of the Territory.

Now, therefore, I, Peter Tali Coleman, Governor of American Samoa, by virtue of the authority vested in the pursuant to Sections 6 and 12 of Article IV of the Revised Constitution of American Samoa and Chapters 1 and 3 of Title 3 of the American Samoa Code, do hereby order as follows:”

27.0301 Administration.

The office of development planning is hereby designated and appointed as the agency of the ASG which shall have the duty and the authority to administer, within the territory, the community development block grant (CDBG) program as authorized by Title I of the Housing and Community Development Act of 1974 (PL 93-383), as amended, and administered by the United States Department of Housing and Urban Development (HUD).

History: Rule 14-80 (Ex. Ord. 5-1980), eff 28 Jul 80, § 1.

27.0302 DPO director duties-Program monitoring, compliance enforcement.

The responsibility for the direction of the CDBG program and for the administration of all HUD grants pursuant to Title I of the Housing and Community Development Act of 1974 (PL 93-383), as amended, is hereby vested in the director of development planning. This responsibility shall include, but shall not be limited to, the monitoring of all actions of the departments, offices, agencies, and instrumentalities of the ASG and of all actions of persons, firms, and corporations contracting with the government which relate to the CDBG program and the taking of all necessary steps to assure that there is full compliance with all applicable federal requirements in the implementation of the CDBG program.

History: Rule 14-80 (Ex. Ord. 5-1980), eff 28 Jul 80, § 2.

27.0303 Rulemaking-DPO director authority.

In order to carry out the responsibilities under this chapter, the director of development planning is authorized to propose to the Governor for his

promulgation, pursuant to the provisions of the Administrative Procedure Act, Chapter 4.10 A.S.C.A., such rules as may be necessary and proper for the effective implementation and administration of this chapter and the policies thereunder established. The director shall also have authority to review and approve all contract documents and awards, progress payments to contractors, requests for draw-downs of CDBG funds from letters of credit, the determination of final costs in all CDBG project closeouts, and to take and require such actions as the director deems necessary and appropriate to ensure that all CDBG funds are obligated, expended, and accounted for in accordance with all applicable federal laws and regulations. Pursuant to this authority, the director may require written reports and copies of records of other departments, offices, agencies, and instrumentalities of the ASG pertaining to the CDBG program or the use of CDBG funds.

History: Rule 14-80 (Ex. Ord. 5-1980), eff 28 Jul 80, § 3.

27.0304 Payment-request approval required.

No request for payment under CDBG letters of credit may be signed by any authorized signature unless it has first been delivered to the office of development planning for review and has been approved in writing by the director or his authorized designee.

History: Rule 14-80 (Ex Ord. 3-1980), eff 28 Jul 80, § 4.

27.0305 Environmental review certifications.

The director of development planning is designated as the “Responsible Federal Official” pursuant to the environmental review requirements set forth at 24 CFR Part 58, and is authorized to make the certifications required thereunder.

History: Rule 14-80 (Ex Ord. 5-1980), eff 28 Jul 80, § 5.

27.0306 Cooperation of ASG agency and personnel.

All departments, offices, agencies, and instrumentalities of the ASG, and all officers and employees thereof, shall cooperate to the fullest extent possible to assist the office of development planning and director of development planning in carrying out the responsibilities and duties hereunder.

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History: Rule 14-80 (Ex. Ord. 5-1980), eff 28 Jul 80, § 6.

TITLE 27 – CHAPTER 04 – CUSTOMS REGULATIONS

Under 27.1030 A.S.C.A., in situations not covered by 27.10 A.S.C.A., the provisions of the United States Code and Code of Federal Regulations relating to customs are used as a guide, insofar as practicable.

TITLE 27 – CHAPTER 05 – ALCOHOLIC BEVERAGE CONTROL

Sections:

I. ALCOHOLIC BEVERAGE CONTROL BOARD

- 27.0501 Authority.
- 27.0502 Policy.
- 27.0503 Meetings-Quorum-Majority.

II: LICENSES

- 27.0505 Eligibility.
- 27.0506 Application-Public notice-Temporary license.
- 27.0507 Public hearing-Issuance-Conditions.
- 27.0508 Grounds for refusal.
- 27.0509 Personal-privilege nature-Term.

III. MANUFACTURE

- 27.0515 Rulemaking upon application.

IV. CONDUCT OF BUSINESS

- 27.0520 Licensee's responsibility.
- 27.0521 Peace and good order-supervision.
- 27.0522 Transferability of licenses.
- 27.0523 Location change.
- 27.0524 Intoxicated persons and minors.
- 27.0525 Consumption near beer vendors' or alcoholic beverage vendors' premises.
- 27.0526 Inspection-Right of entry.
- 27.0527 Special conditions-Segregated display, sales and sales records.

V. PURCHASERS

- 27.0530 Age.

VI. SUSPENSION AND REVOCATION

- 27.0535 Grounds.
- 27.0536 Hearing notice.

- 27.0537 Summary suspension.
- 27.0538 Failure to appear at hearing.
- 27.0539 Criminal prosecution.
- 27.0540 Hearing procedure.

VII. IMPORTATION

- 27.0545 Defined.
 - 27.0546 Legal and regulatory conformance required.
 - 27.0547 Importation by individuals.
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I. ALCOHOLIC BEVERAGE CONTROL BOARD

27.0501 Authority.

The rules of the Alcoholic Beverage Control Board promulgated in this chapter are pursuant to the authority granted under 27.0503 (1) (A) A.S.C.A.

History: Alc. Bev. Con. Ed. Regs. eff prior to 1975, § 1.01; and Rule 11-79, eff 13 Dec 79, § 2.

27.502 Policy.

It is the declared policy of the board in promulgating the rules set out in this chapter to implement the enforcement and administration of Chapter 27.05 A.S.C.A., and to protect not only persons consuming or purchasing alcoholic beverage but to provide for the safety, protection, and furtherance of the general welfare of the people of American Samoa with reference to the consumption, purchase, sale, and importation of beer and alcoholic beverages in American Samoa.

History: Alc. Bev. Con. Ed. Regs. eff prior to 1975, § 1.02; and Rule 11-79, eff 13 Dec 79, § 3.

27.0503 Meetings-Quorum-Majority.

The alcoholic beverage control board will meet at least once a quarter at a time and place to be designated by the chairman. Special meetings may be called at the discretion of the chairman or at the request of at least 2 members of the board. At least 4 members of the board are necessary to constitute a quorum and a majority of those present shall be sufficient to decide any issue.

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975, § 1.03; and Rule 11-79, eff 13 Dec 79, § 4.

II. LICENSES

27.0505 Eligibility.

All persons, whether an individual, a partnership, joint venture or similar entity, or a corporation, who are in compliance with all applicable laws and rules of American Samoa, are eligible for an alcoholic beverage license, beer tavern license, beer vendor's license, beer importer's license, alcoholic beverage vendor's license or alcohol beverage importer's license.

History: Alc. Bev. Con. Bd. Regs., eff prior to 1975, § 2.01; and Rule 11-79, eff 13 Dec 79, § 5; and Rule 285, eff 27 Jun 85, § 1.

27.0506 Application-Public notice-Temporary license.

Application for license will be processed according to the following procedures:

- (a) The applicant shall submit an application to the chairman of the alcoholic beverage control board on such form as is prescribed by the board. The form must be completed fully.
- (b) Upon receipt by the chairman of the board of the application, the chairman shall set a date, time, and place for a public hearing to hear any objections concerning the application. The hearing shall be a minimum of 15 days from the date of receipt of the application.
- (c) Upon receipt of the date, time and place of the public hearing, the applicant shall forth-with post 10 consecutive days before the public hearing on or immediately adjacent to the main entry door to the premises to be used under the license a notice of intent to sell alcoholic beverages or beer upon the premises or to import beer or alcohol on such form as is prescribed by the board. The notice shall be in both the Samoan and English languages and shall contain at a minimum, the following information:
 - (1) Name of the proposed license;
 - (2) Nature of the license being applied for;
 - (3) The date, time and place of the hearing to consider the application; and (4) A statement that all interested persons may submit objections or other views to the board orally or in writing at the hearing.
- (d) At or before the public hearing, the applicant shall present to the board an affidavit or other evidence satisfactory to the board that he has complied with the notice requirement.
- (e) At or before the public hearing, the applicant shall also provide certificates, in forms satisfactory to the board, as follows:
 - (1) From the pulenu'u of the village in which the premises are located, that the village council and himself approve the application;
 - (2) From the director of public health, that the premises and operation as contemplated will comply with the health and sanitation provisions of the laws of American Samoa;
 - (3) From the commissioner of public safety, that the location of the premises and parking therefor will not create traffic hazards, and setting forth the applicant's criminal record, if any;
 - (4) From the fire chief, that the premises comply with all safety requirements regarding fire equipment, emergency exits, and other safety measures for the public;
 - (5) From the building inspector, that the premises comply with the building laws of American Samoa for the type of occupancy for which it is to be used;
 - (6) From the director of development planning, that the use of the premises as contemplated is permitted in the zone in which the premises are located under the laws of American Samoa; and
 - (7) From the attorney general or chief immigration officer, that the applicant is a United States national, or an American Samoan, permanent resident, or otherwise eligible with respect to the immigration laws of American Samoa for the license.
- (f) Notwithstanding the foregoing procedures, the board may, upon the written approval of at least 4 members, approve a temporary license to sell alcoholic beverages or beer upon the premises in

connection with single fundraising events licensed under the laws of American Samoa.

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975, § 202; and Rule 11-79, eff 13 Dec 79, §6; and Rule 2-85, eff 27 Jun 85, § 2.

27.0507 Public hearing-Issuance-Conditions.

The board shall consider all objections to issuance of the license. If, after consideration of all evidence presented at the public hearing, the board finds that issuance of a license will not be detrimental to the public interest or the health, safety, and welfare of the people of American Samoa, the board may authorize a license to the applicant. Nothing herein shall limit the board's power to impose conditions upon issuance of the license in addition to those required by the fire chief, public health officer, building inspector, or commissioner of public safety if, after consideration of the matter, the board finds that such additional requirements are necessary for the protection of patrons or the general public.

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975, § 2.03.

27.0508 Grounds for refusal.

The board may refuse any applicant if it has reasonable grounds to believe:

- (1) that the granting of a license in the locality set out in the application is not consistent with public interest or convenience; proposed location within 50 yards of any public school, private school authorized by the director of education, or church is prima facie evidence of inconsistency with public interest or convenience;
- (2) that any applicant to sell for consumption on the premises has been financed or furnished with money or property or has any connection with a member or members of the board;
- (3) that the applicant has been convicted at any time of a felony;
- (4) that the applicant has maintained a noisy, lewd, disorderly, or unsanitary establishment;
- (5) that the applicant did not have a previous good record of compliance with the alcoholic

beverage laws of American Samoa and the rules of the board;

- (6) that the applicant is not eligible under the provisions of 27.0505;
- (7) that the applicant is unable to understand the alcoholic beverage control laws of American Samoa or rules of the board pursuant thereto;
- (8) that the applicant is substantially under the direction and control, through family or other relationship, of mother person, whether an individual, a member of a partnership, joint venture, or similar entity or an owner of a corporation connected with the refused original license or a revoked or suspended license;
- (9) the applicant has failed to meet any other requirement determined ; necessary by the board.

History: Alc. Bev. Con. Ed. Regs. eff prior to 1975, § 2-04; and Rule 11-79, eff 13 Dec 79, § 7.

27.0509 Personal-privilege native-Term.

Any license granted by the board shall be:

- (1) purely a personal privilege;
- (2) valid until suspended, or revoked by action of the board provided the annual license fees as required by 27.0211 and 27.0240 A.S.C.A., are paid.

History: Alc. Bev. Con. Ed. Regs. eff prior to 1975, § 2.05; and Rule 11-79, eff 13 Dec. 79, § 8.

III. MANUFACTURE

27.0515 Rulemaking upon application.

The board does not contemplate that any person will be manufacturing beer, or alcoholic beverages in American Samoa for some time. Therefore, the board has not promulgated rules in relation to the manufacture of beer or alcoholic beverages. Should an application be received for manufacture of alcoholic beverages or beer, the board will promulgate rules governing the applications.

History: Alc. Bev, Con. Bd. Regs. eff prior to 1975, § 3.01.

IV. CONDUCT OF BUSINESS

27.0520 Licensee’s responsibility.

Licensees are at all times responsible for the conduct of their business and are at all times directly responsible for any act or conduct of any employee which is in violation of Chapter 27.05 A.S.C.A., or the rules of the board, whether the licensee is present at any such time or not. This section is defined to mean that any unlawful, unauthorized, or prohibited act on the part of any agent or employee shall be construed as the act of the employer and the employer shall be proceeded against as though he were present and had an active part in such unlawful, unauthorized, or prohibited act and as if the act has been at the employer’s direction and with his knowledge.

History: Alc. Bev. Con. Bd. Regs., eff prior to 1975, § 4-01; and Rule 11-79, eff 13 Dec 79, § 9.

27.0521 Peace and good order-Supervision.

Regarding licenses which permit consumption of beer or alcoholic beverages on the premises, the licensee or an authorized representative capable of maintaining peace and good order shall be on the premises at all times the establishment shall be open for business. The individual performing this function must be mature and in strong physical condition appropriate to the task.

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975, § 4.02.

27.0522 Transferability of licenses.

Licenses issued under this chapter are non-transferable.

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975, § 4-03.

27.0523 Location change.

Any licensee desiring to change the location of his business must make application for such change to the board. Such application shall contain a statement that he owns or has proper lease on the premises and shall contain such other information as the board requires, including a copy of the new lease if such premises are leased. No licensee shall change the location of his place of business unless and until the board endorses on the license that such licensee has approval of such change of location.

History: Alc. Bev. Con. Bd. Regs., eff prior to 1975, § 4.04.

27.0524 Intoxicated persons and minors.

If at any time hereafter it is made to appear to this board that any licensee or employee of any licensee has sold or permitted to be sold to any person under the age of 21 any beer or alcoholic beverage, or permitted a person under the age of 21 to be on the premises without his parent or guardian, or has allowed anyone to become intoxicated or has sold or permitted to be sold any beer or alcoholic beverage to any intoxicated person on the premises, it shall be deemed to have been done knowingly by such licensee or his employee and the licensee shall upon proper notice and hearing have his license suspended pursuant to Article VI of this Chapter.

History: Alc. Bev. Con. Bd. Regs., eff prior to 1975, § 4.05.

27.0525 Consumption near beer vendors’ or alcoholic beverage vendors’ premises.

Beer vendors’ licenses and alcoholic beverage vendors’ licenses are for consumption off premises only and there shall be no alcoholic beverage or beer consumed within 50 yards of a licensed premises.

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975, § 4.06; and Rule 2-85, eff 27 Jun 85, § 3.

27.0526 Inspection-Right of entry.

No licensee shall prohibit any person, authorized by the board or the commissioner of public safety, director of public works, or director of health, or their authorized representatives, to enter the premises of the licensee for purposes of making an inspection to determine whether the licensee is operating in compliance with this chapter and laws in effect in American Samoa.

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975, § 4.07; and Rule 11-9, eff 13 Dec 79, § 10.

27.0527 Special conditions-Segregated display, sales and sales records.

- (a) Alcohol Beverage Vendors. If the premises for which an alcohol beverage vendors’ license is issued is not used exclusively for the sale of liquor, then a space upon said premises shall be set aside in a manner approved by the board exclusively for the display and sale of liquor. Liquor display and sales shall only be conducted from that approved segregated, space and minors shall be strictly prohibited therefrom. Records of

liquor sales by alcohol beverage vendors must be segregated from records of all other sales and maintained in a manner approved by the board. Licensees shall file with the board quarterly sale reports at the treasurer's office.

- (b) Alcohol Beverage Importers. If the premises for which an alcohol beverage importer's license is issued is not used exclusively for the importation of liquor, then a space upon said premises shall be set aside in a manner approved by the board exclusively for the importation, wholesale display and wholesale sale of liquors. Wholesale liquor sales and display shall be conducted only from that approved segregated space and minors are to be prohibited therefrom, and such sales shall be made only to those license holders so authorized by statute and not to any other individuals or entities. Import records and records of liquor sales by alcohol beverage importers must be segregated from records of all other sales and maintained in a manner approved by the board. Licensees shall file with the board quarterly sales reports at the treasurer's office.

History: Rule 2-85. eff 27 June 85. § 4.

V. PURCHASERS

27.0530 Age.

A person must be 21 years of age or over to be qualified to purchase beer or alcoholic beverages.

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975. § 5.01.

VI. SUSPENSION AND REVOCATION

27.0535 Grounds.

The board may revoke or suspend any license if it finds or has reasonable grounds to believe that the licensee or any of his employees:

- (1) has violated any provision of Chapter 27.05 A.S.C.A., or any lawful rule promulgated by the board;
- (2) has made any false representation or statement to the board in order to induce or prevent action by the board;
- (3) maintains a noisy, lewd, disorderly, or unsanitary establishment;

- (4) knowingly has sold alcoholic beverages to persons under 21 years of age, to persons known to be drunkards, or to persons visibly intoxicated at the time of sale;

- (5) any other reason which, in the opinion of the board, based on public interest, warrants canceling or suspending such license.

History: Alc. Bev. Con. Bd. Regs., eff prior to 1975, § 6.01.

27.0536 Hearing notice.

The board shall furnish notice of hearing to suspend or revoke any license to the licensee or, in the event of the licensee's absence from American Samoa, the person in charge of licensed premises, by personally serving a copy of the notice on the licensee or person in charge of the licensed premises in the event of the licensee's absence from American Samoa. The notice shall serve at least 7 days prior to the date set for hearing and shall include the time, place, purpose of hearing, and a clear, concise statement of the basis of the board's intended action.

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975, § 6.02.

27.0537 Summary suspension.

No license shall be suspended without a hearing as provided for in this article unless the board determines that the public welfare requires emergency action, and incorporates such a finding in its order. Under this section the board may order a summary suspension of a license for a period nor to exceed 120 days pending other action,

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975, § 6.03.

27.0538 Failure to appear at hearing.

Any licensee who fails to appear before the board as directed to present a defense to the offense alleged after having been first given proper notice of contemplated suspension or revocation of his license by reason of an alleged violation of the law or rules, then the board may proceed with suspension or revocation if it appears, after having heard the evidence, that the violation did in fact occur, whether or not such licensee appears before the board on the date of the hearing.

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History: Alc. Bev. Con. Bd. Regs., eff prior to 1975, § 6.04.

27.0539 Criminal prosecution.

A licensee may be prosecuted for any violation of the law in addition to the penalties provided under this chapter.

History: Alc. Bev. Con. Bd. Regs., eff prior to 1975, § 6.05.

27.0540 Hearing procedure.

The agency hearing procedures prescribed by 4.1025 through 4.1034 A.S.C.A., shall be followed in all proceedings before the board for the suspension or revocation of a license.

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975, § 6.06; and Rule 11-79, eff 13 Dec 79, § 11.

VII. IMPORTATION

27.0545 Defined.

“Import” means to bring into or cause to bring into American Samoa and, as used in this article, pertains to beer and alcoholic beverages.

History: Alc. Bev. Con. Bd. Regs., eff prior to 1975, § 7.01.

27.0546 Legal and regulatory conformance required.

Except as otherwise provided by this chapter and laws in effect in American Samoa, the importation of any beer or alcoholic beverage into the territory of American Samoa is prohibited.

History: Alc. Bev. Con. Bd. Regs. eff prior to 1975, 7-02; and eff 23 Oct 75.

27.0547 Importation by individuals.

Any person entering American Samoa may have in possession not more than 1 gallon of alcoholic beverage, provided that such beverage is unopened in the container in which it was retailed.

History: Alc. Bev. Con. Bd. Regs, eff prior to 1975, § 7.03; and eff 23 Oct 75; Rule 3-76, eff 29 Mar 76.

TITLE 27 – CHAPTER 06 – WEIGHTS & MEASURES

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I. *WEIGHING AND MEASURING DEVICES*

27.0601 Authority.

The rule codified in this article is adopted under the authority of 27.0605 (3) and (15) A.S.C.A.

History: Rule 7-76, eff 19 Oct 76, § 1.

27.0602 Applicability-Government, nonprofit exemption.

This article shall apply to all weighing and measuring devices that are commercially used or susceptible of commercial usage within the territory, except:

- (1) weighing and measuring devices used by the ASG;
- (2) weighing and measuring devices used by the federal government; and
- (3) weighing and measuring devices used by nonprofit organizations.

History: Rule 7-76, eff 19 Oct 76, § 2.

27.0603 Definitions.

- (1) “accurate” means a piece of equipment that meets the performance or value within the applicable tolerances and other performance requirements;

- (2) “commercially used”, “commercial usage”, and “commercial use” means both retail and wholesale transactions;
- (3) “computing scale” means one that indicates the money values of amounts of commodity weight, at predetermined unit prices; through all or part of the weighing range’ of the scale;
- (4) “correct” means that a piece of equipment is correct when, in addition to being accurate, it meets all applicable specification requirements;
- (5) “director” means the director of the consumer protection bureau;
- (6) “suitability” means that a piece of commercial equipment is suitable for the service in which it is used with respect to elements of its design.

History: Rule 7-76, eff 19 Oct 76, § 3; and Rule 4-87, eff 21 Apr 87.

27.0604 Suitability.

- (a) Any person who sells or intends to purchase any weighing and measuring device for commercial use shall first inquire at the weights and measures branch to determine the suitability of the device for the intended use as approved by the director.
- (b) A hanging spring dial scale or a household spring dial scale is not suitable for weighing meat, poultry, fish, or produce.

History: Rule 7-76, eff 19 Oct 76, § 4; and Rule 4-87, eff 21 Apr 87.

27.0605 Accuracy.

Weighing and measuring devices that are approved for suitability by the director shall be accurate and correct.

History: Rule 7-76, eff 19 Oct 76, § 5; and Rule 4-87, eff 21 Apr 87.

27.0606 Inspection-Frequency.

The director shall within 90 days after 1 Oct of each year, or more often in his discretion, cause all devices or appliances used for the ascertainment of weight, length, or measure in connection with buying or selling, or with transporting or receiving for shipment any commodity offered for sale or to be offered for

sale, or for any purpose, to be inspected, proved as to accuracy, and sealed.

History: Rule 7-76, eff 19 Oct 76, § 6; and Rule 4-87, eff 21 Apr 87.

27.0607 Inspection-Exhibition for.

Every merchant, corporation, or person using or having on his premises a device or appliance for use in the ascertainment of weight, length, or measure in connection with buying or selling, or with transportation or receiving for shipment any commodity offered for sale or to be offered for sale, or for any other commercial purpose, shall exhibit the same to the director for his designated representative upon his request for inspection and examination.

History: Rule 7-76, eff 19 Oct 76, § 7; and Rule 4-87, eff 21 Apr 87.

27.0608 Inspection-Records.

It shall be the duty of the director to keep a record of all scales, weights, and measures inspected and sealed by him, in which shall be stated the name and owner of the same, the date of inspection, fees received therefor, and whether or not they conform to the standard of the office of the director.

History: Rule 7-76, eff 19 Oct 76. § 8; and Rule 4-87, eff 21 Apr 87.

27.0609 Inspection-Fees.

The director shall collect for each annual inspection of a weighing or measuring device, before delivering to the owner thereof a certificate that it is accurate and correct, the following fees:

- (a) For scales:
 - (1) From 1 to 30lbs.weight capacity \$ 5.00;
 - (2) Over 30 to 100 lbs. weight capacity 7.00;
 - (3) Over 100 to 1,000 lbs. weight capacity 10.00;
 - (4) Over 1,000 to 5,000 lbs. weight capacity 15.00;
 - (5) Over 5,000 to 10,000 lbs. weight capacity 20.00;
 - (6) Over 10,000 to 20,000 lbs. weight capacity 25.00;

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(7) Over 20,000 lbs. weight capacity 30.00;

History: Rule 7-76, eff 19 Oct 76, § 10; and Rule 4-87, eff 21 Apr 87.

(b) For dry or liquid measures:

(1) Less than 1 gallon 1.00;

(2) More than 1 gallon 3.00;

(3) Retail petroleum dispenser 5.00;

(4) Petroleum truck meters 15.00;

(5) Petroleum rack meters 30.00;

(6) Truck-compartment-used measures
20.00;

27.0611 Deposit of fees.

The director shall deposit to the general fund of the treasury of American Samoa all fees collected pursuant to this article.

History: Rule 7-76, eff 19 Oct 76, § 11; and Rule 4-87, eff 21 Apr 87.

27.0612 Severability.

If any provision or part of a provision of this article, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.

History: Rule 7-76, eff 19 Oct 76, § 12.

II. PACKAGES, LABELS, AND PRICES

27.0615 Authority.

The rule codified in this article is adopted under the authority of 27.0605(3) A.S.C.A.,

History: Rule 6-76, eff 19 Oct 76, § 1.

27.0616 Applicability-Exceptions.

This article shall apply to packages and to commodities in package form, but shall not apply to:

- (1) inner wrappings not intended to be individually sold to the customer;
- (2) shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors, but in no event shall this exclusion apply to packages of consumer or nonconsumer commodities, as defined in this article;
- (3) auxiliary containers or outer wrappings used to deliver packages of such commodities to retail customers if such containers or wrappings bear no printed matter pertaining to any particular commodity;
- (4) containers used for retail tray pack displays when the container itself is not intended to be sold (e.g., the tray that is used to display

(c) For linear measures:

(1) Thirty-six-inch yardstick 2.00;

(2) Greater than 36-inch wooden measures
3.00;

(3) Measuregraph 5.00;

(4) Metal tape, 0 to 12 feet 5.00;

(5) Wire or rope measures 5.00;

(6) Odometer (rent-a-car) 6.00;

(7) Taxicab (with meter) 6.00.

(d) All approvals shall be granted subject to collection of the fees in this section and 27.0610 ASAC. A charge of \$15 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 director or his delegate for any such fee shall not be binding if a fee is uncollectable. Remittances of fees must be in the form of United States currency, cashiers check or personal check only. Check must be drawn on a bank or other institution located in American Samoa and be payable in United States currency and made payable to "Treasurer-American Samoa Government."

History: Rule 7-76, eff 19 Oct 76, § 9; and Rule 4-87, eff 21 Apr 87.

27.0610 Calibration-Fees.

The director may, at the owner's request, calibrate a weight or measure device. The minimum charge shall be \$20; thereafter, \$5 per hour.

individual envelopes of seasonings, gravies, etc. and the tray itself is not intended to be sold); or

- (5) open carriers and transparent wrappers or carriers for containers when the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the label information required by this article.

History: Rule 6-76, eff 19 Oct 76, §2.

27.0617 Definitions.

As used in this article:

- (1) “commodity in package form” means commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale; an individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be a commodity in package form;
- (2) “consumer package” or “package of consumer commodity” means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the house hold or in connection with personal possessions;
- (3) “label” means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon or adjacent to a consumer commodity or a package containing any consumer commodity, for purposes of branding, identifying, or giving any information with respect to the commodity or to the contents of the package; except, that an inspector’s tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be deemed to be a label requiring the repetition of label information required by this article;
- (4) “multiunit package” means package containing 2 or more individual packages of the same commodity, in the same quantity, with the

individual packages intended to be sold as part of the multiunit package but capable of being individually sold in full compliance with all requirements of this article;

- (5) “nonconsumer package” or “package of nonconsumer commodity” means any commodity in package form other than a consumer package, and particularly a package intended solely for industrial or institutional use or for wholesale distribution;
- (6) “person” means both a singular and plural, and shall include any individual, partnership, company, corporation, association, and society;
- (7) “principal display panel or panels” means that part, or those parts, of a label that is, or are, so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display and purchase; wherever a principal display panel appears more than once on a package, all requirements pertaining to the “principal display panel” shall pertain to all such principal display panels;
- (8) “random package” means package that is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights; that is, packages of the same consumer commodity with no fixed pattern of weight.

History: Rule 6-76, eff 19 Oct 76, § 3.

27.0618 Declaration of identity-Consumer packages.

- (a) A declaration of identity on a consumer package shall appear on the principal display panel, and shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like.
- (b) A declaration of identity on a consumer package shall appear generally parallel to the base on which the package rests as it is designed to be displayed.

History: Rule 6-76, eff 19 Oct 76. § 4.

27.0619 Declaration of identity-Nonconsumer packages.

A declaration of identity on a nonconsumer package shall appear on the outside of a package and shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like.

History: Rule 6-76, eff 19 Oct 76, § 5.

27.0620 Corporate or business name.

(a) Any package kept, offered, or exposed for sale, or sold, at any place other than on the premises where packed shall specify conspicuously on the label of the package the name and address of the manufacturer, packer, or distributor. The name shall be the actual corporate name, or, when not incorporated, the name under which the business is conducted. For imported packages, the address shall include street address, city, state, and ZIP code number; however, the street address may be omitted if this is shown in a current city directory or telephone directory. The requirement for inclusion of the ZIP code number shall apply only to labels that have been developed or revised after 1, Jul 68.

(b) If a person manufactures, packs, or distributes a commodity at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where the commodity was manufactured or packed or is to be distributed unless such statement would be misleading. Where the commodity is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such commodity, such as “Manufactured for and packed by.....” “Distributed by.....or any other wording of similar import that expresses the facts.

History: Rule 6-76, eff 19 Oct 76, § 6.

27.0621 Whole units and fractions in declarations of quantity.

Where this article requires that the quantity declaration be in terms of the largest whole unit, the declaration shall, with respect to a particular package,

be in terms of the largest whole unit of weight or measure, with any remainder expressed in:

- (1) common or decimal fractions of such largest whole unit; or
- (2) the next smaller whole unit, or units, with any further remainder in terms of common or decimal fractions of the smallest unit present in the quantity declaration.

History: Rule 6-76, eff 19 Oct 76, § 7.

27.0622 Net quantity declaration required.

A declaration of net quantity of the commodity in the package, exclusive of wrappers and any other material packed with such commodity, shall appear on the principal display panel of a consumer package and, unless otherwise specified in this article (see 27.0628 through 27.0631), shall be in terms of the largest whole unit.

History: Rule 6-76, eff 19 Oct 76, § 8.

27.0623 Net weight.

The term “net weight” shall be used in conjunction with the declaration of quantity in terms of weight; the term may either precede or follow the declaration of weight.

History: Rule 6-76, eff 19 Oct 76, § 9.

27.0624 Lines of print or type.

A declaration of quantity may appear on 1 or more lines of print or type.

History: Rule 6-76, eff 19 Oct 76, § 10.

27.0625 Weight, liquid measure, or count-Combined description.

(a) The declaration of the quantity of a particular commodity shall be expressed in terms of liquid measure if the commodity is liquid, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives

accurate and adequate information as to the quantity of the commodity.

- (b) A declaration of quantity in terms of weight shall be combined with appropriate declarations of the measure, count, and size of the individual units unless a declaration of weight alone is fully informative.
- (c) A declaration of quantity in terms of measure shall be combined with appropriate declarations of the weight, count, and size of the individual units unless a declaration of measure alone is fully informative.
- (d) A declaration of quantity in terms of count shall be combined with appropriate declarations of the weight, measure, and size of the individual units unless a declaration of count alone is fully informative,

History: Rule 6-76, eff 19 Oct 76, § 11.

27.0626 Units generally-Abbreviations-Metrics.

- (a) A declaration of quantity:
 - (1) in units of weight shall be in terms of the avoirdupois pound or ounce;
 - (2) in unit of liquid measures shall be in terms of the United States gallon of 231 cubic inches or liquid-quart, liquid-pint, or fluid-ounce subdivisions of the gallon, and shall express the volume at 68 degrees Fahrenheit (20 degrees Celsius), except in the case of petroleum products, for which the declaration shall express the volume at 60 degrees Fahrenheit (15.6 degrees Celsius), and except also in the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at the frozen temperature, and except also in the case of a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at 40 degrees Fahrenheit (4 degrees Celsius);
 - (3) in units of linear measure shall be in terms of the yard, foot, or inch;
 - (4) in units of area measure shall be in terms of the square yard, square foot, or square inch;

- (5) in units of dry measure shall be in terms of the United States bushel of 2,150.42 cubic inches, or peck, dry-quart, and dry-pint subdivisions of the bushel;
- (6) in units of cubic measure shall be in terms of the cubic yard, cubic foot, or cubic inch; provided, that in the case of a commodity packed for export shipment, the declaration of quantity may be in terms of the metric system of weight or measure.

- (b) Any of the following abbreviations for customary units, and none other, may be employed in the quantity statement on a package of commodity:

(1) Avoirdupois	avdp;
(2) Cubic	cu;
(3) Feet or foot	ft;
(4) Fluid	fl;
(5) Gallon	gal;
(6) Inch	in;
(7) Liquid	liq;
(8) Ounce	oz;
(9) Pint	pt;
(10) Pound	lb;
(11) Quart	qt;
(12) Square	sq;
(13) Weight	wt;
(14) Yard	yd.

There normally are no periods following, nor plural forms of, these abbreviations. For example, “oz” is the abbreviation for both “ounce” and “ounces”.

- (c) Any of the following metric symbols may be employed in the quantity statement on a package of commodity:
 - (1) meter m
 - (2) millimeter mm
 - (3) square meter m²

- | | | |
|--------------|-----|--|
| (4) liter | l | being carried out to not more than 2 decimal places. |
| (5) gram | g | |
| (6) kilogram | kg. | |
- (b) The declaration of quantity shall be expressed in terms of:

The liter is widely used for volume in preference to its equivalent, the cubic decimeter (dm³). Symbols are not capitalized unless the unit is derived from a proper name. Periods should not be used after the symbol. Symbols are always written in the singular form do not add “s” to express the plural when the symbol is used. Multiples and submultiples of the above units and symbols may be used provided they follow the guidelines of the International System (IS) of Units or ISO Standard 1000.

History: Rule 6-76, eff 19 Oct 76, § 12.

27.0267 Fluid ounce-Dry pint or quart.

When the term “ounce” is employed in a declaration of liquid quantity, the declaration shall identify the particular meaning of the term by the use of the term “fluid”; however, such distinction may be omitted when, by association of terms (for example, as in “1 pint 4 ounces”), the proper meaning is obvious. Whenever the declaration of quantity is in terms of the dry pint or dry quart, the declaration shall include the word “dry”.

History: Rule 6-76, eff 19 Oct 76, § 13.

27.0628 Units prescribed for specified quantities.

- (a) The declaration of quantity shall be expressed in terms of:
- (1) in the case of length measure of less than 1 foot, inches and fractions of inches;
 - (2) in the case of area measure of less than 1 square foot, square inches and fractions of square inches;
 - (3) in the case of weight of less than 1 pound, ounces and fractions of ounces;
 - (4) in the case of fluid measure of less than 1 pint, ounces and fractions of ounces; provided, that the quantity declaration appearing on a random package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction

- (1) in the case of length measure of 4 feet or more, feet, followed in parentheses by a declaration of yards and common or decimal fractions of the yard, or in terms of feet followed in parentheses by a declaration of yards with any remainder in terms of feet and inches;
- (2) in the case of area measure of 4 square feet or more, weight of 4 pounds or more, fluid. measure of 1 gallon or more, the largest whole unit.

History: Rule 6-76, eff 19 Oct 76, § 14.

27.0629 Dual quantity declaration.

- (a) On packages containing 1 pound or more but less than 4 pounds, the declaration shall be expressed in ounces and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit; provided, that the quantity declaration appearing on a random package may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than 2 decimal places.
- (b) On packages containing 1 pint or more but less than 1 gallon, the declaration shall be expressed in ounces, and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.
- (c) On packages containing 1 foot but less than 4 feet, the declaration shall be expressed in inches and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.
- (d) On packages containing 1 square foot but less than 4 square feet, the declaration shall be expressed in square inches and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.

History: Rule 6-76, eff 19 Oct 76, § 15.

27.0630 Bidimensional commodities.

For bidimensional commodities (including roll-type commodities) the quantity declaration shall be expressed:

- (1) if less than 1 square foot, in terms of linear inches and fractions of linear inches;
- (2) if at least 1 square foot but less than 4 square feet, in terms of square inches followed in parentheses by a declaration of both the length and width, each being in terms of the largest whole unit; provided, that:
 - (A) no square inch declaration is required for a bidimensional commodity of 4 inches width or less;
 - (B) a dimension of less than 2 feet may be stated in inches within the parenthetical; and
 - (C) commodities consisting of usable individual units (except roll-type commodities with individual usable units created by perforations, for which see 27.0631) require a declaration of unit area but not a declaration of total area of all such units;
- (3) if 4 square feet or more, in terms of square feet followed in parentheses by a declaration of the length and width in terms of the largest whole unit; provided, that:
 - (A) no declaration in square feet is required for a bidimensional commodity with a width of 4 inches or less;
 - (B) bidimensional commodities, with a width of 4 inches or less, shall have the length expressed in inches followed by a statement in parentheses of the length in the largest whole unit (for example, 2 inches by 360 inches (10 yards));
 - (C) a dimension of less than 2 feet may be stated in inches within the parenthetical; and
 - (D) no declaration in square feet is required for commodities for which the length and width measurements are critical in terms of end use (such as tablecloths or bed sheets) if

such commodities clearly present the length and width measurements on the label.

History: Rule 6-76, eff 19 Oct 76, § 16.

27.0631 Tissues-Toilet paper.

- (a) If the commodity is in individually usable units of 1 or more components or ply, the quantity declaration shall, in addition to complying with other applicable quantity declaration requirements of this article, include the number of ply and the total number of usable units.
- (b) Roll-type commodities, when perforated so as to identify individuals usable units, shall not be deemed to be made up of usable units; however, such roll-type commodities shall be labeled in terms of:
 - (1) total area measurement;
 - (2) number of ply;
 - (3) count of usable units; and
 - (4) dimensions of a single usable unit.

History: Rule 6-76, eff 19 Oct 76, § 17.

27.0632 Fractions.

- (a) A statement net quantity of contents of any consumer commodity may contain common or decimal fractions. A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds, except that:
 - (1) if there exists a firmly established general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity they may be employed; and
 - (2) if linear measurements are required in terms of yards or feet, common fractions may be in terms of thirds.
- (b) A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than 2 places.

History: Rule 6-76, eff 19 Oct 76, § 15.

27.0633 Supplementary declarations-Metric-system description.

- (a) The required quantity declaration may be supplemented by one or more declarations of weight, measure, or count, such declaration appearing other than on a principal display panel. Such supplemental statement of quantity of contents shall not include any terms qualifying a unit of weight, measure, or count that tends to exaggerate the amount of commodity contained in the package; e.g., “giant” quart, “full” gallon, “when packed”, “minimum”, or words of similar import.
- (b) A separate statement of the net quantity of contents in terms of the metric system is not regarded as a supplemental statement, and a statement of quantity in terms of the metric system of weight or measure may also appear on the principal display panel or on other panels.

History: Rule 6-76, eff 19 Oct 76, § 19.

27.0634 Qualification of declaration-Exaggeration.

In no case shall any declaration of quantity be qualified by the addition of the words “when packed”, “minimum”, or “not less than”, or any words of similar import, nor shall any unit of weight, measure, or count be qualified by any term (such as “jumbo”, “giant”, “full”, or the like) that tends to exaggerate the amount of commodity.

History: Rule 6-76, eff 19 Oct 76. § 20.

27.0635 Nonconsumer packages-Declaration of net quantity.

A nonconsumer package shall bear on the outside a declaration of the net quantity of contents. Such declaration shall be in terms of the largest whole unit (see 27.0621).

History: Rule 6-76, eff 19 Oct 76, § 21.

27.0636 Nonconsumer packages-Terms-Trade custom.

The declaration of the quantity of a particular nonconsumer commodity shall be expressed in terms of liquid measure if the commodity is liquid, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms

of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

History: Rule 6-76, eff 19 Oct 76, § 22.

27.0637 Nonconsumer packages-Units generally-Abbreviations.

- (a) A nonconsumer package declaration of quantity:
 - (1) in units of weight shall be in terms of the avoirdupois pound or ounce;
 - (2) in units of liquid measure shall be in terms of the United States gallon of 231 cubic inches or liquid-quart, liquid-pint, or fluid-ounce subdivisions of the gallon, and shall express the volume at 68 degrees Fahrenheit (20 degrees Celsius), except in the case of petroleum products, for which the declaration shall express the volume at 60 degrees Fahrenheit (15.6 degrees Celsius), and except also in the case of a commodity that is normally sold and consumed while frozen for which the declaration shall express the volume at the frozen temperature, and except also in the case of a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at 40 degrees Fahrenheit (4 degrees- Celsius);
 - (3) in units of linear measure shall be in terms of the yard, foot, or inch;
 - (4) in units of area measure shall be in terms of the square yard square foot or square inch;
 - (5) in units of dry measure shall be in terms of the United States bushel of 2,150.42 cubic inches, or peck, dry-quart and dry-pint subdivisions of the bushel;
 - (6) in units of cubic measure shall be in terms of the cubic yard, cubic foot, or cubic inch; provided, that noth.in2 in this subsection shall prohibit the labeling of nonconsumer

packages in terms of units of the metric system.

- (b) Any generally accepted abbreviation of a unit name may be employed in the quantity statement on a package of a nonconsumer commodity (for commonly accepted abbreviations, see 27.0626(b) and (c)).

History: Rule 6-76, eff 19 Oct 76, § 23.

27.0638 Nonconsumer packages-Shortage, averaging prohibited.

The average quantity of contents in the package of a particular lot, shipment, or delivery of a nonconsumer commodity shall at least equal the declared quantity, and no unreasonable shortage in any package shall be permitted, even though averages in other packages in the same shipment, delivery, or lot compensate for such shortage.

History: Rule 6-76, eff 19 Oct 76, § 24.

27.0639 Prominence and legibility of required information.

All information required to appear on a consumer package shall appear thereon in the English language and shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers and as to color of letters and numbers in contrast to color of background. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

History: Rule 6-76, eff 19 Oct 76, § 25.

27.0640 Location.

The declaration or declarations of quantity of the contents of a package shall appear in the bottom 30% of the principal display panel or panels except as otherwise provided in 27.0654 for cylindrical containers.

History: Rule 6-76, eff 19 Oct 76, § 26.

27.0641 Type or lettering style-Blown, formed, molded labels.

The declaration or declarations of quantity shall be in such a style of type or lettering as to be boldly, clearly, and conspicuously presented with respect to other type, lettering, or graphic material on the

package, except that a declaration of net quantity blown, formed, or molded on a glass or plastic surface is permissible when all label information is blown, formed, or molded on the surface.

History: Rule 6-76, eff 19 Oct 76, § 27.

27.0642 Color contrast.

The declaration or declarations of quantity shall be in a color that contrasts conspicuously with its background, except that a declaration of net quantity blown, formed, or molded on a glass or plastic surface shall not be required to be presented in a contrasting color if no required label information is on the surface in a contrasting color.

History: Rule 6-76, eff 19 Oct 76, § 28.

27.0643 Free area around declaration.

The area surrounding the quantity declaration shall be free of printed information:

- (1) above and below, by a space equal to at least the height of the lettering in the declaration, and
- (2) to the left and right, by a space equal to twice the width of the letter “N” of the style and size of type used in the declaration.

History: Rule 6-76, eff 19 Oct 76, § 29.

27.0644 Layout of quantity declaration-Orientation to base of package.

The quantity declaration shall be presented in such a manner as to be generally parallel to the declaration of identity and to the base on which the package rests as it is designed to be displayed.

History: Rule 6-76, eff 19 Oct 76, § 30.

27.0645 Principal display panel.

- (a) The square-inch area of the principal display panel shall be:
- (1) in the case of a rectangular container, 1 entire side of which properly can be considered to be the principal display panel, the product of the height times the width of that side;
 - (2) in the case of a cylindrical or nearly cylindrical container 40% of the product of the height of the container times the circumference; or

(3) in the case of any other shaped container, 40% of the total surface of the container unless such container presents an obvious principal display panel (for example, the top of a triangular or circular package of cheese, or the top of a can of shoe polish), the area shall consist of the entire such surface.

(b) Determination of the principal display panel shall exclude tops, bottoms flanges at tops and bottoms of cans, and shoulders and necks of bottles or jars.

History: Rule 6-76, eff 19 Oct 76, § 31.

27.0646 Number and letter height.

(a) The height of any letter or number in the required quantity declaration shall be not less than that shown in Table 1 with respect to the square-inch area of the panel, and the height of each number of a common fraction shall meet 1/2 the minimum height standards.

TABLE 1. MINIMUM HEIGHT OF NUMBERS AND LETTERS

Square-inch Area of Principal Display Panel.
Minimum Height of Numbers and Letters(inches)
Minimum Height Label Information Blown, Formed, or Molded on Surface of Containers (inches)

5 and less	1/16	1/8
Greater than 5 and not greater than 25	1/8	3/16
Greater than 25 and not greater than 100	3/16	1/14
Greater than 100 and not greater than 400		5/16
Greater than 400		9/16

(b) No number or letter shall be more than 3 times as high as it is wide.

History: Rule 6-76, eff 19 Oct 76, § 32.

27.0647 Prominence and placement on nonconsumer packages.

All information required to appear on a nonconsumer package shall be definitely and clearly stated thereon in the English language.

Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

History: Rule 6-76, eff 19 Oct 76, § 33.

27.0648 Display card packages.

For an individual package affixed to a display card, or for a commodity and display card together composing a package, the type size of the quantity declaration is governed by the dimensions of the display card.

History: Rule 6-76, eff 19 Oct 76, § 34.

27.0649 Egg cartons.

When cartons containing 1 2 eggs have been designed so as to permit division in half by the retail purchaser, the required quantity declaration shall be so positioned as to have its context destroyed when the carton is divided.

History: Rule 6-76, eff 19 Oct 76, § 35.

27.0650 Aerosols and similar pressurized containers.

The declaration of quantity on an aerosol package, and on a similar pressurized package, shall disclose the net quantity of the commodity (including propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed.

History: Rule 6-76, eff 19 Oct 76, § 36.

27.0651 Multiunit packages.

Any package containing more than 1 individual “commodity .in package form” (see 27.0617(1)) of the same commodity shall bear on the outside of the package a declaration of:

- (1) the number of individual units;
- (2) the quantity of each individual unit; and
- (3) the total quantity of the contents of the multiunit package; provided, that any such declaration of total quantity shall not be required to include the parenthetical quantity statement of a dual quantity representation.

History: Rule 6-76, eff 19 Oct 76, § 37.

27.0652 Combination packages of dissimilar commodities.

Any package containing individual units of dissimilar commodities (such as an antiquing kit, for example) shall bear on the label of the package a quantity declaration for each unit.

History: Rule 6-76, eff 19 Oct 76, § 35.

27.0653 Variety packages.

Any package containing individual units of reasonably similar commodities (such as, for example seasonal gift packages and variety packages of cereal) shall bear on the label of the package a declaration of the total quantity of commodity in the package.

History: Rule 6-76, eff 19 Oct 76, § 39.

27.0654 Cylindrical containers.

In the case of cylindrical or nearly cylindrical containers information required to appear on the principal display panel shall appear within that 40% of the circumference which is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

History: Rule 6-76, eff 19 Oct 76, § 40.

27.0655 Containers-Measured containers-Liners.

(a) Commodities designed and sold at retail to be used as containers for other materials or objects, such as bags, cups, boxes, and pans, shall be labeled with the declaration of net quantity as follows:

- (1) For bag-type commodities, in terms of count followed by linear dimensions of the bag (whether packaged in a perforated roll or otherwise):
 - (A) When the unit bag is characterized by 2 dimensions because of the absence of a gusset, the width and length will be expressed in inches, except that a dimension of 2 feet or more will be expressed in feet with any remainder in terms of inches or common or decimal fractions of the foot (for example: “25 bags 17in x 20 in” or “100 bags, 20 in x 2 ft 6 in” or “50 bags, 20 in x 21/2 ft”);
 - (B) When the unit bag is gusseted, the dimensions will be expressed as width, depth, and length, in terms of inches, except that any dimension of 2 feet or more will be expressed in feet with any remainder in terms of inches or the

common or decimal fractions of the foot (for example: “25 bags, 17 in x 4 in x 20 in” or “100 bags, 20 in x 12 in x 2-1/2 ft”):

- (2) For other square, oblong, rectangular, or similarly shaped containers, in terms of count followed by length, width, and depth, except depth need not be listed when less than 2 inches (for example: “2 cake pans, 8 in x 8 in” or “roasting pan, 12 in x 8in x 3 in”);
 - (3) For circular or other generally round-shaped containers, except cups, and the like, in terms of count followed by diameter and depth, except depth need not be listed when less than 2 inches (for example: “4 pie pans, 8 in diameter x 4 in”);
- (b) When the functional use of the container is related by label references in standard terms of measure to the capability of holding a specific quantity of substance or class of substances, such references shall be a part of the net quantity statement and shall specify capacity as follows:
- (1) Liquid measure for containers which are intended to be used for liquids, semisolids, viscous materials, or mixtures of solids and liquids. The expressed capacity will be stated in terms of the largest whole unit (gallon, quart, pint, ounce), with any remainder in terms of the common or decimal fraction of that unit (for example: Freezer Boxes “4 boxes, 1-qt capacity, 5 in x 4 in x 3 in”);
 - (2) Dry measure for containers which are intended to be used for solids. The expressed capacity will be stated in terms of the largest whole unit (bushel, peck), with any remainder in terms of the common or decimal fraction of that unit; (for example: Leaf Bags - “8 bags, 6-bushel capacity, 3 ft x 5 ft”);
- (c) Where containers are used as liners for other more permanent containers, the declaration of net quantity shall be in the same terms-as are normally used to express the capacity of the more permanent container (for example:

Garbage Can Liners - “10 liners, 2 ft 6in x 3 ft 9 in, fits up to 30-gallons cans”); provided, that notwithstanding the requirements set out in this section, the net quantity statement for containers such as cups will be listed in terms of count and liquid capacity per unit (for example: “24 cups, 6 fl oz capacity”). For purposes of this section, the use of the terms “capacity”, “diameter”, and “fluid” is optional.

History: Rule 6-76. eff 19 Oct 76. § 41.

27.0656 Wearing apparel-Textile products-Threads and yarns.

- (a) Wearing apparel (including nontextile apparel and accessories such as leather goods and footwear) sold as single-unit items, or if normally sold in pairs (such as hosiery, gloves, and shoes) sold as single-unit pairs, shall be exempt from the requirements for a net quantity statement by count, as required by 27.0625.
- (b) Bed sheets, blankets, pillowcases, comforters, quilts, bedspreads, mattress covers and pads, afghans, throws, dresser and other furniture, scarfs, tablecloths and napkins, flags, curtains, drapes, dish towels, dish cloths, towels, face cloths, utility cloths, bath mats, carpets and rugs, pot holders, fixture and appliance covers, nonrectangular diapers, slip covers, etc., shall be exempt from the requirements of 27.0629; provided, that:
 - (1) the quantity statement for fitted sheets and mattress covers shall state, in inches, the length and width of the mattress for which the item is designed, such as “twin”, “double”, “king”, etc. (for example: “Twin fitted sheet for 39 x 75 in mattress”);
 - (2) the quantity statement for flat sheets shall state the size designation of the mattress for which the sheet is designed, such as “twin”, “double”, “king”, etc.; the quantity statement also shall state, in inches, the length and width of the mattress for which the sheet is designed, followed in parentheses by a statement, in inches, of the length and width of the sheet before hemming (for example: “Double Flat Sheet

for 54 x 75 in mattress (81 x 104 in before hemming)”);

- (3) the quantity statement for pillowcases shall state the size designation of the pillow for which the pillowcase is designed such as “youth”, “standard”, and “queen”, etc.; the quantity statement also shall state, in inches, the length and width of the pillow for which the pillowcase is designed, followed in parentheses by a statement, in inches, of the length and width of the pillowcase before hemming (for example: “Standard Pillowcase for 20 x 26 in pillow (42 x 36 in before hemming)”);
- (4) the quantity statement for blankets, comforters, quilts, bedspreads, mattress pads, afghans, and throws shall state, in inches, the length and width of the finished item; the quantity statement also may state the length of any ornamentation and the size designation of the mattress for which the item is designed, such as “twin”, “double”, “king”, etc.;
- (5) the quantity statement for tablecloths and napkins shall state, in inches, the length and width of the finished item; the quantity statement also may state parenthetically, in inches, the length and width of the item before hemming and properly identified as such;
- (6) the quantity statement for curtains, drapes, flags, furniture, scarfs, etc., shall state, in inches, the length and width of the Finished item; the quantity statement also may state parenthetically, in inches, the length of any ornamentation;
- (7) the quantity statement for carpets and rugs shall state, in feet, with any remainder in common or decimal fractions of the foot or in inches, the length and width of the item; the quantity statement also may state parenthetically, in inches, the length of any ornamentation;
- (8) the quantity statement for woven dish towels, dish cloths, towels, face cloths, utility cloths, bath mats, etc. shall state, in

inches, the length and width of the item; the quantity statement for such items, when knitted, need not state the dimensions;

- (9) the quantity statement for textile products such as pot holders, fixture and appliances covers, nonrectangular diapers, slip covers, etc. shall be stated in terms of count and may include size designations and dimensions;
 - (10) the quantity statement for other than rectangular textile products identified in paragraphs (b) (1) through (8) of this section shall state the geometric shape of the product and the dimensions which are customarily used in describing such geometric shape (for example: “Oval Tablecloth 54 x 42 in representing the maximum length and width in this case);
 - (11) the quantity statement for packages of remnants of textile products of assorted sizes, when sold by count, shall be accompanied by the term “irregular dimensions” and the minimum size of such remnants.
- (c) Variation from declared dimensions are normally considered unreasonable when there is:
- (1) for an item with no declared dimension less than 24 inches, a minus variation greater than 3% of a declared dimension and a plus variation greater than 6% of a declared dimension;
 - (2) for an item with a declared dimension less than 24 inches, a minus variation greater than 6% of a declared dimension and a plus variation greater than 12% of a declared dimension.
- (d) Variety packages of textiles which are required by reason of 27.0651 to provide a combination declaration stating the quantity of each individual unit, shall be exempt from the requirements in this article for:
- (1) location (See 27.0640);
 - (2) free area (see 27.0643); and

- (3) minimum height of numbers and letters (see 27.0646).

(e) Sewing and handicraft threads shall be exempt from the requirements of 27.0628(b); provided, that:

- (1) the net quantity statement for sewing and handicraft threads shall be expressed in terms of yards; and
- (2) the net quantity statement for yarns shall be expressed in terms of weight;
- (3) thread products may, in lieu of name and address, bear a trademark, symbol, brand, or other mark that positively identifies the manufacturer, packer, or distributor, provided that such marks, employed to identify the vendor shall be filed with the director:
- (4) each unit of industrial thread shall be marked to show its net measure in terms of yards or its net weight in terms of avoirdupois pounds or ounces except that ready-wound bobbins which are not sold separately shall not be required to be individually marked, but the package containing such bobbins shall be marked to show the number of bobbins contained therein and the net yards of thread on each bobbin.

History: Rule 6-76, eff 19 Oct 76, § 42.

27.0657 Seed packages.

Packages of seeds intended for planting shall be labeled in full accord with this article except as follows:

- (a) The quantity statement shall appear in the upper 30% of the principal display panel;
- (b) The quantity statements shall be in terms of the largest whole unit of the metric system for all weights up to 1/4 ounce, and in the avoirdupois system for all other weights up to 8 ounces; packaged seeds 8 ounces or more shall not be subject to this section;
- (c) The quantity statement for seed tapes, preplanters, etc., shall be in terms of count;

- (d) This section shall apply only to labels revised after 19 Oct 76.

History: Rule 6-76, eff 19 Oct 76, § 43.

27.0658 Dual declaration.

Whenever any consumer commodity or package of consumer commodity is exempted from the requirements for dual quantity declaration, the net quantity declaration required to appear on the package shall be in terms of the largest whole unit, except as provided in 27.0651.

History: Rule 6-76, eff 19 Oct 76, § 44.

27.0659 Random packages.

- (a) A random package bearing a label conspicuously declaring the net weight price per pound, and total price shall be exempt from the type size, dual declaration, placement, and free area requirements of this article. In the case of a random package packed at one place for subsequent sale at another, neither the price per unit of weight nor the total selling price need appear on the package, provided the package label includes both such prices at the time it is offered or exposed for sale at retail.
- (b) This exemption shall also apply to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random packages exempted by this section.

History: Rule 6-76, eff 19 Oct 76, § 45.

27.0660 Penny candy.

Individually wrapped pieces of “penny candy” and other confectionery of less than 1/2 ounce net weight per individual piece shall be exempt from the labeling requirements of this regulation when the container in which such confectionery is shipped is in conformance with the labeling requirements of this article. Similarly, when such confectionery items are sold in bags or boxes, such items shall be exempt from the labeling requirements of this regulation, including the required declaration of net quantity of contents, when the declaration of the bag or box meets the requirements of this article.

History: Rule 6-76, eff 19 Oct 76, § 46.

27.0661 Individual servings.

Individual-serving-size packages of foods containing less than 1/2 ounce or less than 1/2 fluid ounce for use in restaurants, institutions, and passenger carriers, and not intended for sale at retail, shall be exempt from the required declaration of net quantity of contents specified in this article.

History: Rule 6-76, eff 19 Oct 76, § 47.

**27.0662 Tobacco cuts, plugs, and twists-
Individual cigars.**

When individual cuts, plugs, and twists of tobacco, and individual cigars are shipped or delivered in containers that conform to the labeling requirements of this article, such individual cuts, plugs, and twists of tobacco, and cigars, shall be exempt from such labeling requirements.

History: Rule 6-76, eff 19 Oct 76, § 48.

**27.0663 Reusable (returnable) glass
containers.**

Nothing in this article shall be deemed to preclude the continued use of reusable (returnable) glass containers; provided, that such glass containers ordered after 19 Oct 76, shall conform to all requirements of this article.

History: Rule 6-76, eff 19 Oct 76, § 49.

27.0664 Cigarette and small cigar cartons.

Cartons of cigarettes and small cigars, containing 10 individual packages of 20 labeled in accordance with the requirements of this article shall be exempt from the requirements set forth in 27.0640, 27.0646, and 27.0651; provided, that such cartons bear a declaration of the net quantity of commodity in the package.

History: Rule 6-76, eff 19 Oct 76, § 50.

**27.0665 Federal requirements supersede-
Exemptions therefor.**

Packages of meat and meat products, poultry and poultry products, tobacco and tobacco products, insecticides, fungicides, rodenticides, and alcoholic beverages shall be exempt from the requirements set forth in 27.0629, 27.0640, and 27.0646; provided, that quantity labeling requirements for such products are specified in federal law, so as to follow reasonably sound principles of providing consumer information.

History: Rule 6-76, eff 19 Oct 76, § 51.

27.0666 Fluid dairy products-Frozen desserts.

(a) Fluid dairy products, ice cream, and similar frozen desserts:

- (1) when packaged in 1/2-liquid-pint and 1/2-gallon containers, are exempt from the requirements for stating net contents of 8 fluid ounces and 64 fluid ounces, which may be expressed as 1/2 pint and gallon, respectively;
- (2) when packaged in 1-liquid-pint, 1-liquid-quart and 1/2-gallon containers, are exempt from the dual net contents declaration requirements of 27.0629;
- (3) when measured by and packaged in 1/2-liquid-pint, 1-liquid-pint, 1-liquid-quart, 1/2-gallon and 1-gallon measure containers as defined in “Measure Container Code of National Bureau of Standards Handbook 44”, are exempt from the requirement of 27.0640 that the declaration of net contents be located within the bottom 30% of the principal display panel.

(b) Milk and milk products, when measured by and packaged in glass or plastic containers of 1/2-liquid-pint, 1-liquid-pint, 1-liquid-quart, 1/2-gallon, and 1-gallon capacities, are exempt from the placement requirement of 27.0639 that the declaration of net contents be located within the bottom 30% of the principal display panel, provided that other required label information is conspicuously displayed on the cap or outside closure, and the required net quantity of contents declaration is conspicuously blown, formed, or molded on. or permanently applied to, that part of the glass or plastic container that is at or above the shoulder of the container.

History: Rule 6-76, eff 19 Oct 76, § 52.

**27.0667 Fruit juice and imitation beverages-
Drinking water.**

Single-strength and less than single-strength fruit juice beverages, imitations thereof, and drinking water:

- (1) when packaged in glass, plastic or fluid-milk-type paper containers of 8-fluid-ounce and 64-fluid-ounce capacity, are exempt from the requirements of 27.0626(a)(2) to the extent that net contents of 8 fluid ounces and 64 fluid ounces (or 2 quarts) may be expressed as 1/2 pint (or half pint) and 1/2 gallon (or half gallon), respectively;
- (2) when packaged in glass, plastic or fluid-milk-type-paper containers of 1-pint, 1-quart, and 1/2-gallon capacities, are exempt from the dual net contents declaration requirements of 27.0629(b);
- (3) when packaged in glass or plastic containers of 1/2-pint, 1-pint, 1-quart, 1/2gallon, and 1gallon capacities, are exempt from the placement requirement of 27.0640 that the declaration of net contents be located within the bottom 30% of the principal display panel; provided, that other required label information is conspicuously displayed on the cap or outside closure and the required net quantity of contents declaration is conspicuously blown formed, or molded into, or permanently applied to, that part of the glass or plastic container that is at or above the shoulder of the container.

History: Rule 6-76, eff 19 Oct 76. § 53.

27.0668 Soft drinks.

- (a) Bottles of soft drinks shall be exempt from the placement requirements for the declaration of:
 - (1) identity when such declaration appears on the bottle closure: and
 - (2) quantity, when such declaration is blown formed or molded on or above the shoulder of the container and when all other information required by this article appears only on the bottle closure.
- (b) Multi-unit packages of soft drinks are exempt from the requirement for a declaration of:
 - (1) responsibility, when such declaration appears on the individual units and is not obscured by the multi-unit packaging, or when the outside container bears a statement to the effect that such declaration

will be found on the individual units inside;
and

- (2) identity, when such declaration appears on the individual units and is not obscured by the multi-unit packaging.

History: Rule 6-76, eff 19 Oct 76, § 54.

27.0669 Butter.

When packaged in 4-ounce, 8-ounce, and 1-pound units with continuous-label-copy wrapping, butter is exempt from the requirements of 27.0618(a) and 27.0644 that the statement of identity and the net quantity declaration be generally parallel to the base of the package. When packaged in 8-ounce and 1-pound units butter is exempt from the requirement of 27.0640 for location of net quantity declaration and, when packaged in 1-pound units, is exempt from the requirement of 27.0629(a) for dual quantity declaration.

History: Rule 6-76, eff 19 Oct 76, § 55.

27.0670 Eggs.

Cartons containing 12 eggs shall be exempt from the requirement of 27.0640 for location of net quantity declaration. When such cartons are designed to permit division in half, each half shall be exempt from the labeling requirements of this article if the undivided carton conforms to all such requirements.

History: Rule 6-76, eff 19 Oct 76, § 56.

27.0671 Flour.

Packages of wheat flour packaged in units of 2, 5, 10, 25, 50, and 100 pounds shall be exempt from the requirement of 27.0640 for location of the net quantity declaration and, when packaged in units of 2 pounds shall be exempt also from the requirement of 27.0629(a) for a dual quantity declaration.

History: Rule 6-76, eff 19 Oct 76, § 57.

27.0672 Small packages.

On a principal display panel of 5 square inches or less, the declaration of quantity need not appear in the bottom 30% of the principal display panel if that declaration satisfies the other requirements of this article.

History: Rule 6-76, eff 19 Oct 76, § 52.

27.0673 Cosmetics in decorative containers.

The principal display panel of a cosmetic marketed in a “boudoir-type” container including decorative cosmetic containers of the ‘cartridge’, “pill box”, “compact”, or “pencil”, variety, and those with a capacity of 1/4 ounce or less, may be a tear-away tag or tape affixed to the decorative container and bearing the mandatory label information as required by this article.

History: Rule 6-76, eff 19 Oct 76, § 59

27.0674 Combination packages.

Combination packages are exempt from the requirements of 27.0640, 27.0641, and 27.0646.

History: Rule 6-76, eff 19 Oct 76, § 60

27.0675 Margarine.

Margarine in 1-pound rectangular packages, except for packages containing whipped or soft margarine or packages containing more than 4 sticks, shall be exempt from the requirement of 27.0640 for location of the net quantity declaration, and shall be exempt from the requirement of 27.0629(a) for a dual quantity declaration.

History: 6-76, eff 19 Oct 76, § 61.

27.0676 Corn flour.

Corn flour packaged in conventional 5, 10, 25, 50, and 100-pound bags shall be exempt from the requirement of 27.0640 for location of the net quantity declaration.

History: Rule 6-76, eff 19 Oct 76, § 62.

27.0677 Prescription and insulin-containing drugs.

Prescription and insulin-containing drugs subject to the provisions of §§ 503 (b) (1) or 506 of the Federal Food, Drug, and Cosmetic Act shall be exempt from the provisions of this article.

History: Rule 6-76, eff 19 Oct 76, § 63.

27.0678 Camera film.

Camera film packaged and labeled for retail sale is exempt from the net quantity statement requirements of this article which specify how measurement of commodities should be expressed; provided that:

- (1) the net quantity of contents on packages of movie film and bulk still film is expressed in terms of the number of lineal feet of usable film contained therein; and
- (2) the net quantity of contents on packages of still film is expressed in terms of the number of exposures the contents will provide; the length and width measurements of the individual exposures, expressed in millimeters or inches, are authorized as an optional statement (for example: “36 exposures, 36 x 24 mm” or “12 exposures, 2-1/4 x 2-1/4 in”).

History: Rule 6-76, eff 19 Oct 76, § 64.

27.0679 Paints and kindred products.

(a) Paints, varnishes, lacquers, thinners, removers, oils, resins, and solvents, when packaged in 1-liquid-pint and 1-liquid-quart units, shall be exempt from the dual quantity declaration requirements of 27.0629(b).

(b) Tint base paint may be labeled on the principal display panel, as required by this article, in terms of a quart or a gallon including the addition of colorant selected by the purchaser; provided, that the system employed ensures that the purchaser always obtains a quart or a gallon; and further provided, that in conjunction with the required quantity statement on the principal display panel, a statement indicating that the tint base paint is not to be sold without the addition of colorant is presented; and further, provided, that the contents of the container, before the addition of colorant, is stated in fluid ounces elsewhere on the label. Wherever the conditions set out in this section cannot be met, containers of tint base paint must be labeled with a statement of the actual net contents prior to the addition of colorant in full accord with all the requirements of this article.

History: Rule 6-76, eff 19 Oct 76, § 65.

27.0680 Antifreeze.

Antifreeze, when packed in 1-liquid-quart units, in metal or plastic containers, shall be exempt from the dual quantity declaration requirements of 27.0629(b).

History: Rule 6-76, eff 19 Oct 76 § 66.

27.0681 Motor oils.

Motor oils. When packed in 1-liquid-quart units, shall be exempt from the dual quantity declaration requirements of 27.0629(b).

Additionally, motor oil in 1-liquid-quart, 1-gallon, 1-1/4 gallon, 2-gallon, and 2-1/2-gallon units, bearing the principal display panel on the body of the container, is exempt from the requirements of 27.0618 to the extent that the SAE viscosity number is required to appear on the principal display panel, provided that the SAE viscosity number appears on the can lid and is expressed in letters and numerals, in type size of at least 1/4 inch.

History: Rule 6-76, eff 19 Oct 76. § 67.

27.0682 Pillows and mattress pads- Stuffed products with permanent labels.

Those products, including pillows, cushions, comforters, mattress pads, and sleeping bags, that bear a permanent label as designated by the Association of Bedding and Furniture Law Officials or by the California Bureau of Home Furnishings shall be exempt from the requirements of 27.0618(a), 27.0620, 27.0640, 27.0643, and 27.0646 and the declarations of identity and responsibility; provided, that declarations of identity, quantity, and responsibility are presented on a permanently attached label and satisfy the other requirements of this article; and further provided, that the information on such permanently attached label is fully observable to the purchaser.

History: Rule 6-76, eff 19 Oct 76, § 62.

27.0683 Put-up commodities to be marked before sale.

Individual packaged commodities put up in variable weights and sizes for sale intact, and intended to be weighed and marked with the correct quantity statement prior to or at the point of retail sale, are exempt from the requirements of 27.0621 while moving in commerce and while held for sale prior to weighing and marking; provided, that the outside container bears a label declaration of the total net weight.

History: Rule 6-76. eff 19 Oct 76. § 69.

27.0684 Packaged commodities sold by count.

When a packaged consumer commodity is properly measured in terms of count only, or in terms of count and some other appropriate unit, and the individual units are fully visible to the purchaser, such packages shall be labeled in full accord with this article, except that those containing 6 or less items need not include a statement of count. Local shellfish and local farm produce sold in an aiga basket or by count shall also be exempt from this section.

History: Rule 6-76, eff. 19 Oct 76, § 70.

27.0685 Fishing lines and reels.

Packaged fishing lines and reels are exempt from the dual quantity declaration requirements of 27.0629; provided, that the quantity or capacity, as appropriate is presented in terms of yards in full, accord with all other requirements of this article.

History: Rule 6-76, eff. 19 Oct 76, § 71.

27.0686 Variation from declaration.

- (a) Variations from the declared net weight, measure, or count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages that occur in good packaging practice, but such variations shall not be permitted to such extent that the average of the quantities in the packages of a particular commodity, or a lot of the commodity that is kept, offered, or exposed for sale, or sold, is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though averages in other packages in the same shipment, delivery, or lot compensate for such shortage. Variations above the declared quantity shall not be unreasonably large.
- (b) Variations from the declared weight or measure shall be permitted when caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in change of weight or measure, but only after the commodity is introduced into intrastate commerce; provided, that the phrase “introduced into intrastate commerce” as used in this subsection shall be construed to define the time and the place at which the first sale and delivery of a package is

made within the territory, the delivery being either;

- (1) directly to the purchaser or to his agent; or
 - (2) to a common carrier for shipment to the purchaser, and this subsection shall be construed as requiring that so long as a shipment, delivery, or lot of packages of a particular commodity remains in the possession or under the control of the packager or the person who introduces the package into intrastate commerce, exposure variations shall not be permitted.
- (c) The magnitude of variations permitted under this section shall, in the case of any shipment, delivery, or lot, be determined by the facts in the individual case.

History: Rule 6-76, eff. 19 Oct 76, § 72.

27.0687 “Cents-off” representation.

- (a) The term “cents-off representation” means any printed matter consisting of the words “cents off” or words of similar import, placed upon any consumer package or placed upon any label affixed or adjacent to such package, stating or representing by implication that it is being offered for sale at a price lower than the ordinary and customary retail sale price.
- (b) Except as set forth in 27.0688, the packager or labeler of a consumer commodity shall not have imprinted thereon a “cents-off” representation unless:
- (1) the commodity has been sold at an ordinary and customary price in the most recent and regular course of business where the “cents off” promotion is made
 - (2) the commodity so labeled is sold at a reduction from the ordinary and customary price, which reduction is at least equal to the amount of the “cents-off” representation imprinted on the commodity package or label;
 - (3) each “cents-off” representation imprinted on the package or label is limited to a phrase which reflects that the price marked by the retailer represents the savings in the amount

of the “cents-off” the retailer’s regular price, e.g., “Price Marked is..... Off the Regular Price”; “price Marked is.....Cents off the Regular Price of This Package”; provided, that the package or label may in addition, bear in the usual pricing spot a form reflecting a space for the regular price, the represented “cents-off”, and a space for the price to be paid by the consumer:

- (4) the commodity at retail presents the regular price, designated as the regular price”, clearly and conspicuously on the package or label of the commodity or on a sign, placard, or shelf marker placed in a position contiguous to the retail display of the “cents-off” marked commodity;
 - (5) not more than 3 “cents-off” promotions of any single size commodity may be initiated in the same trade area within a 12-month period: at least 30 days must lapse between “cents-off” promotions of any particular size packaged or labeled commodity in a specific trade area; and any single-size commodity so labeled may not be sold in a trade area for a duration in excess of 6 months within any 12-month period;
 - (6) sales any single-size commodity so labeled in a trade area do not exceed in volume 50% of the total volume of sales of such size commodity in the same trade area during any 12-month period. The 12-month period may be the calendar, fiscal, or market year, provided that the identical period is applied in this paragraph and (b) (5) or this section. Volume limits may be calculated on the basis of projections for the current year but shall not exceed 50% of the sales for the preceding year in the event actual sales are less than the projection for the current year.
- (c) No “cents-off” promotion shall be made available in any circumstances where it is known or there is reason to know that it will be used as an instrumentality for deception or for frustration of value comparison; e.g., where the retailer charges a price which does not fully pass

on to the consumers the represented price reduction or where the retailer fails to display the regular price in the display area of the “cents-off” marked product.

- (d) The sponsor of a “cents-off” promotion shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection and shall be retained for a period of 1 year subsequent to the end of the year (calendar, fiscal, or market) in which the “cents-off” promotion occurs.

History: Rule 6-76, eff 19 Oct 76, § 73.

27.0688 *Introductory offers.*

- (a) “Introductory offer” means any printed matter consisting of the words “introductory offer” or words of similar import, placed upon a package containing any new commodity or upon any label affixed on or adjacent to such new commodity, stating or representing by implication that such new commodity is offered for retail sale at a price lower than the anticipated ordinary and customary retail sale price.
- (b) The packager or labeler of a consumer commodity may not have imprinted thereon an introductory offer unless:
 - (1) the product contained in the package is new, has been changed in a functionally significant and substantial respect, or is being introduced into a trade area for the first time;
 - (2) each offer on a package or label is clearly and conspicuously qualified;
 - (3) no commodity so labeled is sold in a trade area for a duration in excess of 6 months;
 - (4) at the time of making the introductory offer promotion, the offerer intends in good faith to offer the commodity, alone, at the anticipated ordinary and customary price for a reasonably substantial period of time following the duration of the introductory offer promotion.
- (c) The packager or labeler of a consumer commodity shall not have imprinted thereon an

introductory offer in the form of a “cents-off” representation unless in addition to the requirements in subsection (b) of this section:

- (1) the package or label clearly and conspicuously and in immediate conjunction with the phrase “Introductory Offer” bears the phrase,..... cents-off the after introductory-offer price”;
 - (2) the commodity so labeled is sold at a reduction from the anticipated ordinary customary price, which reduction is at least equal to the amount of the reduction from the after-introductory offer price representation on the commodity package or label.
- (d) No introductory offer with a “cents-off” representation shall be made available in any circumstance where it is known or there is reason to know that it will be used as an instrumentality for deception or for frustration of value comparison, e.g., where the retailer charges a price which does not fully pass on to consumers the represented price reduction.
- (e) The sponsor of an introductory offer shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection and shall be retained for a period of 1 year subsequent to the period of the introductory offer.

History: Rule 6-76, eff 19 Oct 76, § 74.

27.0689 Economy size.

- (a) “Economy size” means any printed matter consisting of the words “economy size”, “economy pack”, “budget pack”, “bargain size”, “value size”, or words of similar import placed upon any package containing any consumer commodity or placed upon any label affixed or adjacent to such commodity, stating or representing directly or by implication that a retail sale price advantage is accorded the purchaser thereof by reason of the size of that package or the quantity of its contents.

(b) The packager or labeler of a consumer commodity may not have imprinted thereon an “economy size” representation unless:

- (1) at the same time the same brand of the commodity is offered in at least 1 other packaged size or labeled form;
 - (2) only 1 packaged or labeled form of that brand of commodity labeled with an “economy size” representation is offered;
 - (3) the commodity labeled with an “economy size” representation is sold at a price per unit of weight, volume, measure, or count which is substantially reduced; i.e., at least 5%, from the actual price of all other packaged or labeled units of the same brand of that commodity offered simultaneously.
- (c) No “economy size” package shall be made available in any circumstances where it is known that it will be used as an instrumentality for deception; e.g., where the retailer charges a price which does not pass on to the consumer the substantial reduction in cost per unit initially granted.
- (d) The sponsor of an “economy size” package shall prepare and maintain invoices or other records showing compliance with subsection (b) of this section. The invoices or other records required by this section shall be open to inspection and shall be retained for 1 year.

History: Rule 6-76, eff 19 Oct 76, § 75.

27.0690 Severability.

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

History: Rule 6-76, eff 19 Oct 76, § 76.

27.0691 Former rules superseded.

All rules heretofore adopted on packaging and labeling are hereby superseded in their entirety and of no further force and effect.

History: Rule 6-76, eff 19 Oct 76, § 77.

TITLE 27 – CHAPTER 07 – AGRICULTURE
PRODUCE BOARD

Sections:

27.0701	Authority.
27.0702	Definitions.
27.0703	Establishment of the board.
27.0704	Terms of office.
27.0705	Vacancies.
27.0706	Board meetings.
27.0707	Disclosure of conflicting interests.
27.0708	Board objectives.
27.0709	Board powers.
27.0710	License eligibility.
27.0711	Regulations governing licenses.
27.0712	License suspension or revocation.
27.0713	Enforcement.

27.0701 Authority.

The rule codified in this chapter is adopted under the authority of Section 6 of Article IV of the Revised Constitution of American Samoa and 4.0302(a) and 4.1002 A.S.C.A.

History: Rule 3-82, eff 12 May 82, § 1.

27.0702 Definitions.

In this chapter, unless the context otherwise requires:

- (1) “Agriculture produce”, means any agricultural commodity;
- (2) “Board” means the Agriculture Produce Board;
- (3) “Chairman” means the chairman of the board;
- (4) “Government” means the American Samoa government; and
- (5) “Governor” means the Governor of American Samoa.

History: Rule 3-82, eff 12 May 82, § 2.

27.0703 Establishment of the board.

- (a) There is established the Agriculture Produce Board.
- (b) The board consists of the following members:

- (1) The Director of Agriculture, who shall be the chairman;
 - (2) The Deputy Secretary of Samoan Affairs, who shall be the deputy chairman;
 - (3) The Agricultural Economist of the Office of Development Planning, who shall be the secretary;
 - (4) The Chief Quarantine Officer; and
 - (5) Two private, commercial farmers appointed by the chairman and approved by the Govern or.
- (c) The powers of the board shall not be affected by any vacancy in its membership, provided that a quorum is present.

History: Rule 3-82, eff 12 May 82, § 3.

27.0704 Terms of office.

- (a) Members of the board by virtue of office or position serve while holding that office or position.
- (b) Appointed members of the board shall hold office for a period of 4 years, and may be reappointed. Subject to the provisions of 27.0705, every appointed member shall continue to hold office until his successor comes into office.

History: Rule 3-82, eff 12 May 82, § 4.

27.0705 Vacancies.

- (a) An appointed member may at any time resign his office by notice in writing to the chairman.
- (b) The Governor, acting on the advice of the chairman or the board, may remove an appointed member:
 - (1) For disability or neglect of duty;
 - (2) If he is satisfied that the appointed member has left American Samoa permanently; or
 - (3) If the appointed member is absent from 3 consecutive meetings of the board without the permission of the board.
- (c) If a member dies, resigns, or is removed from office, the vacancy shall be filled by an

appointment made in the same manner as that of the member vacating office.

History: Rule 3-82, eff 12 May 82, § 5.

27.0706 Board meetings.

- (a) Board meetings shall be held at such times and places as the chairman or the board directs.
- (b) The chairman shall call a meeting whenever required to do so in writing by any 2 members.
- (c) At any meeting 4 members shall form a quorum.
- (d) The chairman shall preside at every meeting at which he is present.
- (e) If the chairman is for any reason absent from a meeting:
 - (1) The deputy chairman shall preside at that meeting if he is present; and
 - (2) If the deputy chairman is not present, the members shall appoint one of their members to preside at that meeting.
- (f) In the absence from a meeting of any member of the board specified in paragraphs (1), (2), (3) or (4) of 27.0703(b), that member may appoint any other senior official of his respective government agency to be his representative at that meeting and a representative so appointed shall while he attends the meeting be deemed for all purposes to be a member of the board, except that he shall not preside at the meeting.
- (g) At every meeting, the chairman or other person presiding shall participate fully in deliberations, and in the case of an equality of votes, he shall cast the deciding vote.
- (h) Every question arising at a meeting shall be decided by a majority of the votes recorded on the question.

History: Rule 3-82, eff 12 May 82, § 6.

27.0707 Disclosure of conflicting interests.

- (a) Any member, who otherwise than as a member, is directly or indirectly interested in any business of the board, shall, as soon as possible after the relevant facts have come to notice, disclose the nature of his interest at a meeting of the board.

- (b) a disclosure under subsection (a) of this section shall be recorded in the minutes of the board and except as other-wise provided by a resolution of the board, the member shall not take part after the disclosure in any deliberations or decisions relating to the business, but shall be counted as present for the purpose or forming a quorum of the board for any such deliberations or decisions.

History: Rule 3-82, eff 12 May 82, § 7.

27.0708 Board objectives.

The board shall have the following general objectives:

- (1) To control and regulate the supply of agriculture produce in American Samoa;
- (2) To promote and foster the stability of domestic agriculture produce in American Samoa;
- (3) To promote and foster a sound marketing structure for agriculture produce in American Samoa; and
- (4) To promote and foster regional cooperation in terms of the trading patterns of agriculture produce in a manner conducive to the orderly and balanced economic development of American Samoa.

History: Rule 3-82, eff 12 May 82, § 8.

27.0709 Board powers.

In pursuance of its objectives, the board shall have the following powers concerning the importation of agriculture produce into American Samoa:

- (1) To formulate policies, and to keep under review and, where necessary, develop changes in such policies;
- (2) To recommend to the Governor the adoption of rules by the Governor to implement policies;
- (3) To issue licenses for importation on conditions in accordance with such rules;
- (4) To give any directions or instructions as are reasonably necessary for licensees or government agencies to carry out the conditions of licenses and provisions of governing rules: and

- (5) To execute such other functions as this chapter or the Governor may direct.

History: Rule 3-82, eff 12 May 82, § 9.

27.0710 License eligibility.

The following eligibility requirements for an agriculture produce license are established:

- (1) Each licensee must be either a sole proprietor, partnership or corporation authorized to do business under the laws of American Samoa;
- (2) Sole proprietors and partners must be 21 years of age or over;
- (3) Each license must provide evidence satisfactory to the board of financial capability to import agriculture produce in compliance with the provisions of 27.071 1
- (4) Each licensee must present evidence satisfactory to the board of arrangements with one or more suppliers of agriculture produce; and
- (5) Each licensee must have prior experience in the importation and sale of agriculture produce, or an employee or agent with such prior experience,

History: Rule 3-82, eff 12 May 82, § 10.

27.0711 Regulations governing licenses.

- (a) A licensee shall import agriculture produce in the minimum and maximum amounts, based on weight, number of packaged units, and/or other reasonable criteria established by the board, on a periodic basis determined by the board. If a licensee's shipment will not meet existing board requirements, notification must be given to the board by the Friday prior to the intended shipment week. For purposes of this section, agriculture produce means taro, ta'amu, bananas, and other fruits and vegetables designated by the board.
- (b) All agriculture produce imported must be sold at a place in American Samoa covered by a valid agriculture produce license. The board may periodically determine and order that licensed areas will exclude the public market and immediately adjacent public areas in Fagatogo, based on the availability of agriculture produce

produced in American Samoa according to reasonable standards of quality and quantity.

- (c) All agriculture produce imported pursuant to a license approved by the board must be sold at a reasonable margin of profit.
- (d) All agriculture produce must be weighed with an approved or certified two-faced scale at time of sale.
- (e) All imports must be accompanied by a certificate required by the quarantine regulations.
- (f) Each licensee is to actively and personally participate in selling imported agriculture produce. If a licensee cannot comply with this requirement, the licensee must designate to the board the person(s) authorized to sell produce for the licensee.

History: Rule 3-82, eff 12 May 82, § 11; and Rule 1242, eff 27 Jan 83, § 2.

27.0712 License suspension or revocation.

Any license approved by the board may be suspended or revoked after reasonable notice and opportunity for hearing, for the following reasons:

- (1) Noncompliance with any of the regulations contained in 27.0711;
- (2) Failure to import produce for 2 consecutive weeks with no advance notification to the board; or
- (3) Violation of any laws or rules concerning the operation of a business in American Samoa.

History: Rule 3-82, eff 12 May 82, § 12.

27.0713 Enforcement.

- (a) The Chief Quarantine Officer in cooperation with the board shall monitor all incoming shipments of agriculture produce from outside American Samoa to insure compliance with the regulations contained in this chapter. The Chief Quarantine Officer is empowered to deny landing of any unauthorized shipment, and will summarize weekly for the information of the board an interested persons the total poundage imported by each licensee.

- (b) In cooperation with the board, the Manager of Weights and Measures will monitor the sale of imported agriculture produce at the public market in Fagatogo and at establishments with valid import licenses to insure that the agriculture produce sold is properly weighed and to check scales for accuracy and official approval or certification.

History: Rule 3-82, eff 12 May 82, § 13.

37TITLE 27 – CHAPTER 08 – FARM SUBSIDY PROGRAM RULES & REGULATIONS

Sections:

- 27.0801 Authority.
 - 27.0802 Pig farmer.
 - 27.0803 Chicken farmer.
 - 27.0804 Beef farmer.
 - 27.0805 Dairy farmer.
 - 27.0806 Taro farmer.
 - 27.0807 Banana farmer.
 - 27.0808 Vegetable farmer.
 - 21.0809 Other farmers.
 - 27.0810 Other rules and regulations generally.
- Approved Farm Production Form

27.0801 Authority.

The following rules and regulations have been adopted by the director of agriculture pursuant to authority given under Public Law 16-27, for implementation of the farm subsidy program:

Section 3. Special Eligibility Requirements.

- (a) To continue eligibility for the subsidy provided under this act, a local farm must cooperate with the designated Government agency in the following areas:
 - (1) Provide the agency with information on production statistics in the format prescribed by the director of agriculture; and
 - (2) Follow approved farming practices recommended by the director of agriculture.
- (b) The director of agriculture shall adopt rules under the Administrative Procedure Act, 3 ASC 1931 et seq. to implement this section.

History: Rule 2-83, eff 7 Mar 83, (part).

27.0802 Pig farmer

- (a) “Pig-farmer” is one who operates a piggery of not less than 5 sows for the first 3 years, and 7 sows years thereafter in a confined area of not less than 6-8 square feet per adult pig.
- (b) Requirements.
 - (1) A piggery must be provided with adequate water supply of not more than 20 pigs per water faucet, with a feeding area or space, whether with concrete floor or its equivalent on a ratio of one pig per square foot.

- (2) A piggery must be provided with adequate shelter to keep pigs dry during stormy weather and require, in addition, a septic tank. (c) Fig farmer must provide a record (see Attachment Sample A, set out at the end of this chapter) at the end of each month as a prerequisite to the subsidy’ benefit for the succeeding month.

History: Rule 2-83, eff 7 Mar 83, § 1.

27.0803 Chicken farmer.

- (a) “Chicken farmer” is one who raises 200 birds inside an enclosed area.
- (b) Requirements.
 - (1) Enclosed area must be provided with shelter, feed water trough, and for laying flocks an area for brooding or laying of eggs;
 - (2) A farmer must provide the Department of Agriculture with accurate information on production (see Attachment Sample B, set out at the end of this chapter).

History: Rule 2-83, eff 7 Mar 83, § 2.

27.0804 Beef farmer.

A “beef farmer” raises at least 5 beef breed cows in a pasture or completely fenced area with a continuous source of fresh water and provides facilities to control and work the cattle.

History: Rule 2-83, eff 7 Mar 83, § 3.

27.0805 Dairy farmer.

A “dairy farmer” operates a goat or cow milking of at least two cows, or three goats, provides for fenced pasture with continuous fresh water, milking shed facilities, feed supplement and milk handling equipment acceptable to standard public health requirements.

History: Rule 2-83, eff 7 Mar 83, § 4.

27.0806 Taro farmer.

A “taro farmer” is one who operates not less than 1 acre of taro plantation, and keeps it 75% weeded as well as relatively free of pest and diseases infestation. He must maintain a monthly planting program of not less than 1,500 tops.

History: Rule 2-83, eff 7 Mar 83, § 5.

27.0807 Banana farmer.

A “banana farmer” is one who, operates not less than 2 acres of banana plantation, and keeps it 75% weeded and bunchy top free, sprays it with fungicides at two-week intervals, and maintains a monthly planting program of not less than 200 plants per month for the first four month, 100 plants per month thereafter. If a farmer has three acres of existing crops, he is required 50 new plants every month thereafter (for reporting purposes, use Attachment-Sample C, set out at the end of this chapter).

History: Rule 2-83, eff 7 Mar 83, § 6.

27.0808 Vegetable farmer.

A “vegetable farmer” is one who operates not less than 1/2 acre of different varieties of vegetable crops. Within 4 months, he must increase his farm to one acre and maintains not less than one acre of vegetables at all times. Entire cultivated area must be kept weed-free at all times, and pest and disease problems must be controlled (for reporting purposes, use Attachment Sample C, set out at the end of this chapter).

History: Rule 2-83, eff 7 Mar 83, § 7.

27.0809 Other farmers.

A farmer specializing in other crops or livestock will be eligible only if lie operates a commercial venture; eligibility will be determined by the director of agriculture on the case-by-case basis.

History: Rule 2-83, eff 7 Mar 83, § 8

27.0810 Other rules and regulations generally.

- (a) In addition, the farmer will cooperate with agriculture specialists in improving production.
- (b) The director of agriculture shall have the discretion to either suspend or remove a farmer’s name from the eligibility list for failure to comply with any of the rules and regulations herein above specified.
- (c) These rules and regulations may be amended from time to time.
- (d) A monthly report of farm production must be submitted to the Department of Agriculture in such form or forms prepared and approved by the director under these rules and regulations.

History: Rule 2-83, eff 7 Mar 83, §§ 9,10,11,12.

APPROVED FARM PRODUCTION FORM
FARM PRODUCTION RECORD

LIVESTOCK

Report for month of _____

Date of Report _____

Farmer’s Name (Print) _____

Village _____

PIGS:		On
hand	On hand	

		Mortality
	this month	last month

Sows -aumatua _____

Boars-po’a e lei fofoina _____

Gilts-tanoa _____

Barrow-po’a uma ona fofo _____

Piglets-tama’i pua’a _____

TOTAL: _____

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I understand that any false information given may lead to cancellation of my subsidy status.

Signed by: _____

Date:

(Farmer’s Signature)

FARMER PRODUCTION RECORD

CROPS

Report for month of _____

Date of report _____

Name _____

Village _____

Taro (In Numbers – Total) _____ Acreage
(4000/acres) _____

Banana (In Number) _____ Acreage
(400/acre) _____

Vegetables (Total) _____ Acreage

Others (Total) _____ Acreage

I understand that my false information gives may lead to cancellation of my subsidized status.

Signed by: _____

Date:

(Farmer’s Signature)

TITLE 27 – CHAPTER 09 – CONSUMER PROTECTION

Sections:

- 27.0901 Authority and purpose.
- 27.0902 Definitions.
- 27.0903 Prohibition.

27.0904 Authorized representation in fee-generating case.

27.0905 Acceptance of fees.

27.0906 Acceptance of a case.

27.0907 Appeals.

27.0908 Amicus curiae.

27.0901 Authority and purpose.

This rule is issued pursuant to authority granted in A.S.C.A., 27.0402(c) for the purpose of insuring the director of the Consumer Protection Bureau will avoid competition with private attorneys in the representation of clients.

History: Rule 5-85, eff 30 Dec 85.

27.0902 Definition.

(a) “Appeal” means any appellate proceeding in an action as defined by law or usage in American Samoa or the High Court of American Samoa.

(b) “Appropriate civil actions” shall include cases filed in court on behalf of individual consumers as well as groups or classes of consumers.

(c) “Director” means the director of the Consumer Protection Bureau or his designated representation.

(d) “Fee-generating case” means any case or matter which, if undertaken on behalf of a consumer by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

History: Rule 5-856, eff 30 Dec 85.

27.0903 Prohibition.

The Consumer Protection Bureau shall not provide legal assistance in a fee-generating case unless other adequate representation is unavailable.

History: Rule 5-85, eff 30 Dec 85.

27.0904 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when:

(a) The director has determined the case or matter involves restitution pursuant to A.S.C.A.,

22.1501 et seq., 27.0405, 27.0701 et seq. And any other restitution provision pursuant to law involving the director.

- (b) The director has determined that a referral is impossible because:
- (1) The case has been rejected by two private attorneys; or
 - (2) The case is the type of case that attorneys have regularly rejected following a referral; or
 - (3) Emergency circumstances compel immediate action before referral can be made, but the consumer is advised that if appropriate, and consistent with professional responsibility, referral will be attempted at a later time, or
- (c) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief, or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counter-claims.

History: 5-85, eff 30 Dec 85.

27.0905 Acceptance of fees.

The Consumer Protection Bureau may seek and accept a fee awarded or approved by a court or included in a settlement if the requirements of Section 27.0904 are met such fees are to be made payable to “ASG Treasurer-Consumer Protection Bureau”.

History: Rule 5-85, eff 30 Dec 85.

27.0906 Acceptance of a case.

The Consumer Protection Bureau may accept an appropriate civil action in accordance with this rule whether the action involves broad policy issues or not and may, in the discretion of the director, decline representation to any consumer.

History: Rule 5-85, eff 30 Dec 85.

27.0907 Appeals.

The director may file an appeal on behalf of a consumer if the requirements of Section 27.0904 are

met, whether the action was initially instituted by the Consumer Protection Bureau.

History: Rule 5-85, eff 30 Dec 85.

27.0908 Amicus curiae.

The director may file an amicus curiae at the request of a private attorney in an appropriate civil action in accordance with the rules of the court in which an action is filed.

History: Rule 5-85, eff 30 Dec 85.

END OF TITLE 27 – COMMERCE CODE

**TITLE 28 – FINANCE AND FINANCIAL
INSTITUTIONS (RESERVED)**

Chapters:

01 Capital Adequacy

TITLE 28 – CHAPTER 01 – CAPITAL
ADEQUACY

**28.0101 Incorporation of FDIC Capital
Adequacy Regulations**

Each depository institution doing business in American Samoa whose deposits are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration shall comply with the minimum capital requirements set forth in 12 Code of Federal Regulations Part 324 applicable to an “FDIC-supervised institution,” as defined in 12 Code of Federal Regulations 324.2, that has made the “AOCI opt-out election” under 12 Code of Federal Regulations Section 324.22(b)(2)(i). Each reference in the preceding sentence to a regulatory provision is deemed to be a reference to that provision as from time to time amended, repromulgated, or substituted.

History: Rule 2022-0004; eff 6 Jan 2023.

END OF TITLE 28 – FINANCE AND FINANCIAL
INSTITUTIONS (RESERVED)

**TITLE 29 – INSURANCE AND INSURANCE
COMPANIES (RESERVED)**

END OF TITLE 29 – INSURANCE AND
INSURANCE COMPANIES (RESERVED)

**TITLE 30 – CORPORATIONS AND
PARTNERSHIPS (RESERVED)**

END OF TITLE 30 – CORPORATIONS AND
PARTNERSHIPS (RESERVED)

TITLE 31 – PROFESSIONS

Chapters:

- 01 Contractors
- 02 Professional Surveyors
- 03 Tradesmen
- 04 Health Services
- 05 Territorial Board of Public Accountancy-Rules for Certified Public Accountants and Public Accountants
- 06 American Samoa Board of Cosmetology

TITLE 31 – CHAPTER 01 – CONTRACTORS

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- 31.0102 Purpose.
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- 31.0104 Responsibilities of board and administrator.
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I. LICENSING BOARD AND LICENSES

31.0101. Authority.

The contractors licensing board and contractor license administrator derive their authority from Chapter 31.05 A.S.C.A., in general, and 31.0503 and 31.0504 A.S.C.A., in particular. The rules codified in this article are promulgated pursuant to 31.0503 (1) and (2) A.S.C.A.

History: Contractors Lic. Bd. Reg. 1.01, eff 12Feb73.

31.0102 Purpose.

The contractors board interprets the interest of the legislature in enacting Chapter 31.05 A.S.C.A., to be the protection of the health, safety, and general welfare of all those persons dealing with individuals engaged in the contracting vocation and the affording to such individuals an effective and practical protection against incompetent, inexperienced, unlawful, and fraudulent acts of contractors with

whom they contract. Also, the board's goal is to upgrade and cultivate responsibility within the contracting vocation as well as the promotion of craftsmanship and financial stability.

History: Contractors Lic. Bd. Reg. 1.02, eff 12 Feb 73.

31.0103 Board-tradesmen board jurisdiction-Laborer supervision.

The contractors licensing board views the responsibilities of the contractors licensing board in relation to the board of tradesmen examiners as follows:

- (a) The contractors licensing board's primary interest is as set out in 31.0102. It thus is concerned with the protection of the general public from unqualified or unscrupulous contractors. Of primary importance, then, is the:
 - (1) contractor's business skill and knowledge of legal requirements to engage in business;
 - (2) integrity and character of contractors; and
 - (3) the professional competency of the contractor if holder of a specialty license, or the competency of those responsible managing employees who qualify the contractor for license by taking and passing the specific examinations provided for in this chapter.
- (b) Next, the board of tradesmen examiners is interested in the tradesmen who are foremen and general foremen licensed by them and who work at a trade immediately under the contractor or the responsible managing employee.
- (c) All employees who are not contractors, responsible managing employees, or tradesmen, foremen or general foremen, shall be designated as laborers. All laborers shall be under the direct supervision of the tradesmen, responsible managing employee, or the contractor.

GENERAL CONTRACTOR

RME: Responsible Managing Employee, those employees who take and pass the "specific" examination by the contractors licensing board which qualify the contractor to obtain a license if such contractor has passed the general examination; T

tradesmen licensed by the board of tradesmen examiners; L : laborers.

- (d) A pyramid of the employees described in subsection (c) of this section is as follows:
- (1) General engineering contractor:
 - (A) Engineer;
 - (B) Tradesmen;
 - (C) Laborer;
 - (2) General building contractor:
 - (A) Responsible managing employee;
 - (B) Tradesmen;
 - (C) Laborers;
 - (3) Specialty contractor:
 - (A) The holder of a specialty license;
 - (B) Tradesmen;
 - (C) Laborers.

History: Contractors Lic. Bd. Reg. 1.03. eff 12 Feb 73.

31.0104 Responsibilities of board and administrator.

The board interprets its functions and the function of the administrator as follows:

- (a) Administrator. The administrator is responsible for the day-to-day administration of the contractors licensing law and this chapter. His authority is set out in 31.0505 A.S.C.A., and 31.0530 of this article.
- (b) Boards. The board's function-is to promulgate this chapter to guide the administrator in his day-to-day administration then, the board's responsibility is to hear an appeal from an adverse decision of the administrator (see 31.0501 A.S.C.A., and 31.0134, 31.0135, and 31.0136 of this article). Therefore, the administrator acts first and the board, after passing the rules, acts only if an applicant or licensee appeals an adverse decision of the administrator.

History: Contractors Lic. Bd. Reg. 1.04, eff 12 Feb 73.

31.0105 Definitions.

For purposes of this chapter, the words below shall be defined as follows:

- (a) "Administrator" means the contractor license administrator.
- (b) "Board" means the contractors licensing board.
- (c) "Contractor" means any person, firm, copartnership, corporation, association, or other organization, or any combination of any thereof, who for a fixed sum, price, fee, percentage, or other compensation other than wages, undertakes with another for the construction, alteration, repair, addition to, or improvement of any building, highway road excavation, or other structure, project, development, or improvement, other than to personality, or any part thereof. The terms includes anyone who builds more than 1 structure on his own property during any 1 year for the purpose of sale and any subcontractor, but does not include anyone who merely furnished materials or supplies without fabricating the same into or consuming the same in the performance of the work of the contractor as herein defined. The term also includes any person who, by advertising or otherwise, holds himself out as a contractor, but does not include persons regularly engaged as maintenance personnel who do casual, isolated, or incidental repairs.
- (d) "General examination" refers to that examination given by the administrator which is required of every applicant for a contractor's license, or a management member, if the applicant is a copartnership, corporation, combination, or other association.
- (e) "Person" means an individual, partnership, joint-venture, corporation, or any combination thereof "Corporation" includes an association, business trust or any organized trust or any organized group of persons.
- (f) "Responsible managing employee" (RME) means those employees who take and pass the specific examination dealing with craftsmanship and knowledge of building trades. RME's shall be superintendents for the job and shall be

responsible for the work done in relation to the type of specific examination taken and passed.

- (g) “Responsible managing member” (RMM) means that bona fide member of a copartnership, corporation, combination, or other association, so designated to take the general examination for such copartnership, corporation, combination, or other association, which shall be noted on any license issued.
- (h) “Specific examination” means that examination given by the administrator or his designee which tests the applicant or his responsible managing employee regarding a specific building trade or trades, knowledge of construction methods, and knowledge of relevant building codes, laws, and regulations.

History: Contractors Lic. Bd. Reg. 1.05. eff 12 Feb 73; and Rule 12-84. eff 25 Dec 84 § 1.

31.0106 License required-Penalty for violation.

Pursuant to 31.0506 A.S.C.A., no person, firm, copartnership, corporation, association, or other association, or any combination of any thereof, whether locally or foreign in origin, shall engage in the business or act in the capacity of a contractor without having a contractor’s license issued by the board. Any person who violates this section shall, upon conviction, be fined not more than \$1,000 or imprisoned for not more than 6 months, or both.

History: Contractors Lic. Bd. Reg. 2.01. eff 12 Feb 73.

31.0107 Classifications of licenses-Bid classifications.

- (a) Pursuant to 31.0507 A.S.C.A., there shall be 3 classifications of contractors’ licenses:
 - (1) General engineering contractor’s license;
 - (2) General building contractor’s license;
 - (3) Specialty contractor’s license.
- (b) Maximum bid classifications are established for general engineering and general building contractors’ licenses as set out in this subsection. There shall be no maximum bid classifications for specialty contractors.
 - (1) Class 1 unlimited;

- (2) Class 2 not to exceed \$150,000;
- (3) Class 3 not to exceed 75,000;
- (4) Class 4 not to exceed 25,000.

History: Contractors Lic. Bd. Reg. 2.02, eff 12 Feb 73.

31.0108 Maximum bid class determination.

A contractor’s net worth, as reflected on his financial statement, multiplied by 4 shall be the basis for ascertaining the bid classification which shall apply to each general engineering or general building contractor. Such contractor may contract within the maximum amount of his maximum bid classification. In other words, if a contractor’s net worth is \$12,000 and is multiplied by 4, giving a total of \$48,000, he may contract within the \$75,000 maximum bid classification.

The money amount for classes 2,3 and 4 shall be the total of all goods and services supplied by contractor pursuant to contract with other persons.

The money amounts for classes 2, 3, and 4 is the maximum amount for the respective contractors, and contractor shall add the amounts of all work currently engaged in to ascertain if he is still within the maximum amount allowed. For work in progress contractor shall add the balance remaining on such work with any new work when obtaining a total. In this context, the protection of the contractor’s creditors is of utmost importance and the administrator may demand full and complete financial records of the relevant work then in progress and shall have full and complete discretion in setting the amount of the balance of work then in progress. The administrator’s decision shall be final. In addition, the administrator may disapprove of any contract in excess of the net worth of the contractor multiplied by 4 if, in the opinion of the administrator, the contractor is nor financially responsible for such additional amount. Since such a decision necessarily involves a value judgment based upon consideration of business acumen of the contractor, trustworthiness, monetary integrity, and the competence of contractor’s employees, such decision by the administrator may be appealed only to the board, and the board’s decision shall be final, and no appeal shall lie whatsoever beyond the board.

History: Contractors' Lic. Bd. Reg. 2.03, eff 12 Feb 73.

31.0109 Application for license.

All applications for a general contractor's license or specialty contractor's license shall be submitted to the administrator and shall be made upon a form supplied by the administrator. Such application shall contain the following information or items and such other and further information deemed necessary by the administrator:

- (1) The required fee as set out in 31.0121;
- (2) A certified financial statement for the previous year, detailing all of the applicant's income, expenses, and debts in sufficient detail so as to fully apprise the administrator of the applicant's financial condition in addition, the administrator may require a certified financial statement for the year the application is made if such application is made 3 or more months past 1 Jan of such year;
- (3) The names and addresses of 3 references, known by applicant for a substantial period of time, of which the administrator may obtain information regarding the applicant's financial ability, business knowledge, and integrity;
- (4) information regarding whomever the applicant has been associated with in joint ventures, partnerships, corporations, or any other combination or association within the last 3 years, the length of such association, the date of disassociation, any outstanding debts from such association, and such other and further information as the administrator deems relevant regarding such association;
- (5) The amount of experience, either business, professional, supervisory, of applicant, in such detail as the administrator deems necessary;
- (6) The names and amount of experience of the applicant's qualifying responsible managing employees, if any, in such detail as the administrator deems necessary.

History: Contractors' Lic. Bd. Reg. 2-04, eff 12 Feb 73.

31.0110 Inability to bind contractually bars license.

No license shall be issued to any person not legally eligible to enter into a contract binding on all parties, or to any copartnership of which a member is so ineligible, or to any corporation, officer, director which is not eligible, or to any other type of business organization of which an ineligible person is designated as a responsible managing member.

History: Contractors Lic. Bd. Reg. 2-05. eff 12 Feb 73.

31.0111 Insufficient application denial-Reasons-Notice.

The administrator may deny any application, if insufficient, for the following reasons: the applicant has not supplied the required information, references, or financial statement. In this event, the administrator shall return the application form and fee with a letter advising the applicant of his denial of the application, stating the reason therefor.

History: Contractors Lic. Bd. Reg. 2.06, eff 12 Feb. 73.

31.0112 Insufficient application denial-Appeal.

Since the administrator shall advise the applicant by letter if he finds that the application is insufficient for any reason set out in 31.0111, there shall be no review whatsoever of the administrator's decision in this context except for arbitrary or capricious denial by the administrator. If arbitrary and capricious action of the administrator is alleged and supported by specific facts, such action may be appealed to the contractors licensing board for hearing as to whether license should issue.

History: Contractor Lic. Bd. Reg. 2.07, eff 12 Feb 73.

31.0113 Supplemental licenses.

- (a) Licensees may obtain supplemental licenses authorizing contract work beyond that covered by the original license. For example, a license to do plumbing contracting may be taken out as a supplemental license to a general building license. It should also be noted that more than 1 supplemental license may be obtained. The examination for a supplemental license is the same specific one given for the original license. No general examination will be given in this context because the applicant will have already

passed such examination to obtain his original license.

- (b) Application forms for supplemental licenses are available from the administrator upon request.

History: Contractors Lic. Bd. Reg. 2.08, eff 12 Feb 73.

31.0114 Examination.

- (a) Every applicant for an original contractor's license shall be required to take the examination prepared and administered by the administrator or his designee.

- (b) There shall be 2 types of examinations: a specific examination which shall be one approved and required for a particular classification, and a general examination which shall be approved and required for all classifications.

(1) **Specific Examination.** Specific examinations shall be administered either by the administrator or his designee and shall be concerned with the particular specialty applied for (31.0510 A.S.C.A., specialty contractor) or one or more unrelated and generally recognized building trades (31.0509 A.S.C.A., general building contractor; 3 trades required) or engineering (31.0508 A.S.C.A., general engineering contractor).

(A) Specialty contractor's license: For a specialty contractor's license the applicant must personally take and pass the examination for the specialty applied for in addition to the general examination as set out in subsection (2) of this section. On application by the specialty contractor for supplemental specialty licenses, an employee of the specialty contractor may take the specific test. Such employee will then be designated a responsible managing employee. (Note: An individual who is not employed may not take a specific examination from the contractors license board to obtain a supplemental specialty license, as such license is supplemental to the specialty license. He may, of course, take the general and specific examinations on application

for a specialty contractor's license or he may be tested by the board of tradesmen examiners pursuant to Chapter 31.05 A.S.C.A., and rules promulgated thereto for a tradesmen certificate.)

- (B) General building contractor's license: The applicant for a general building contractor's license need not take the specific examination personally as long as 1 or more of his employees take and pass examinations administered by the administrator or his designee for 3 unrelated and generally recognized building trades, and such employees are designated responsible managing employees, and the general contractor engages in only those trades as licensed.

- (C) General engineering licenses: An applicant for a general engineering contractor's license need not take the specific examination personally as long as 1 or more of his employees take and pass such examination and are responsible managing employees, and all work done by such general engineering contractor is the type of work which was the subject of the examination taken and passed by the responsible managing employee or general engineering contractor.

- (D) The administrator may substitute part of the specific examination required in this subsection by on-the-job inspections of the applicants ability and by the requiring of work samples, blueprint discussions, or other practical discussions or demonstrations.

- (2) General Examination. Every applicant operating a sole proprietorship shall personally take and pass a general knowledge examination approved and administered by the administrator. Every copartnership, corporation, or other combination or association shall designate a

member of its management to take such general knowledge examination. Such examination shall cover the following subjects:

- (A) General knowledge of labor and alien laws in American Samoa;
- (B) General knowledge of safety and health laws;
- (C) Such general knowledge of administrative principles of the contracting business as the board deems necessary for the health, safety, and protection of the public;
- (D) General knowledge of tax and social security requirements, Workmen's Compensation Act requirements, and immigration law and rules regarding employment of aliens.

(c) Examinations shall be given at least once each quarter of the calendar year.

History: Contractors Lic. Bd. Reg. 2.09. eff 12 Feb 73; and 7-87. Eff 18 May 87 1.

31.0115 Experience.

Applicants for contracting licenses must possess the following experience and provide satisfactory proof thereof to the administrator.

(a) Every applicant for a contractor's license or the applicant's responsible managing employee in the care of a general building contractor's license must have had, within the last 10 years immediately preceding the filing of the application, not less than 4 years' experience as a journeyman, foreman, supervising employee, or contractor in the particular class within which the applicant intends to engage a contractor. Acceptable technical training in an accredited school will be counted as experience for the purposes of this section but in no case will technical training count for more than 3 years' experience. If the applicant designates a responsible managing employee who takes and passes the specific examination in the applicant's stead, such information shall be noticed on the license issued, and all work done by the general contractor shall be done under the

direct control and supervision of the responsible managing employee and shall be of the type of work for which such employee was examined in the specific examination.

- (b) The required experience for a general contractor's license may be possessed by no more than 3 separate individuals.
- (c) The required experience for a specialty contractor's license shall be possessed by a member of the applicant entity or the responsible managing employee who shall be required to take the specific examination.
- (d) Qualification for experience:
 - (1) If an individual, he may qualify by a personal appearance or by the appearance of his responsible managing employee(s).
 - (2) If a copartnership, a corporation, or any other combination or organization, it may qualify by the appearance of the responsible managing employee(s) for purposes of taking and passing the specific examination and a member of the applicant entity of such firm for purposes of taking and passing the general examination.
 - (3) The individual(s) qualifying on behalf of individual or firm under this section shall allege and prove to the satisfaction of the administrator that he is a bona fide managing member or employee of such individual, copartnership, corporation, or other combination or association, and, at all times when the principal or employer is actively engaged as a contractor, shall exercise authority in connection with his individual firm, copartnership, corporation, combination, or association or in connection with the employer's contracting business, as the case may be.
 - (4) The exercise of authority so as to qualify for a license for the firm, copartnership, corporation, combination, or association shall be as, or similar to, the following:
 - (A) Responsible managing employees: be superintendents of the work and other

employees, be responsible for the technical competence of the work, be responsible for integrity of work done in relation to the blueprints, specifications, or other drawings of work;

- (B) Member of management qualifying the firm: make administrative decisions, etc.

History: Contractors Lic. Bd. Reg. 2.10, eff 12 Feb 73.

31.0116 Denial of license.

- (a) The administrator shall deny an application for a contractor's license:
 - (1) if the applicant fails to make a sufficient application as more fully explained in 31.0109;
 - (2) if the applicant fails either the general or specific examination or the person designated as the responsible managing employee fails the specific examination; or
 - (3) if the applicant or his responsible managing employee has insufficient experience as required by 31.0115; or
 - (4) if the responsible managing employee or responsible managing member is not a bona fide employee or member;
 - (5) if the applicant is an ineligible individual as defined by 31.0110; or
 - (6) if the applicant provides false or fraudulent information in his application for a license; or
 - (7) for any other matter deemed sufficient by the administrator considering the Contractors Licensing Law and this chapter; or
 - (8) for any other reason set out in 31.0131, suspension or revocation grounds.

Any denial of an application for the above set-out reasons may be appealed to the board for a hearing de novo. Such appeal must be brought within ten days of the notice of denial by the administrator.

History: Contractors Lic. Bd. Reg.. 2.11, eff 12 Feb 73; and Rule 7-87, eff 18 May 87, § 2.

31.0117 Financial statements.

- (a) Each contractor shall submit to the administrator, for his and the board's use, a certified yearly financial statement. Such statement shall be due and submitted in conjunction with the contractor's application for a business license pursuant to Chapter 27.02 A.S.C.A.
- (b) In addition, the administrator may require a financial statement for any contract in which contractor has agreed to supply goods or services, and the administrator may require financial statements at any time he believes that contractor may be contracting beyond the maximum bid classification in which the contractor has been placed by the administrator or board.

History: Contractors Lic. Bd. Reg. 2.12. eff 12 Feb 73.

31.0118 Joint ventures.

- (a) A joint venture on a construction project is permissible and joint ventures are divided into 2 classifications:
 - (1) Joint venture on performance of work:

This type of joint venture is permissible provided all parties to the joint venture hold contractor's licenses in the proper classification for the principal work to be bid or contracted.
 - (2) Joint venture on financing: A holder of a general building contractor's license may join himself with another person, firm, partnership, corporation, or association for purposes of obtaining credit or to obtain a cosigner for its obligations, or to obtain a higher maximum bid classification by use of the other's financial statement, provided all joint venturer are residents or conduct their business in the United States. Such person, firm, partnership, corporation, or association shall appoint an agent within American Samoa so that service of process and other notices, papers, and communications may be effected.

- (b) Notice of intent to enter into either type of joint venture or partnership shall be filed with the administrator before a bid is submitted, and the administrator shall have complete discretion to accept or reject such joint venture. The administrator may demand a financial statement from such person, firm, copartnership, corporation, or association or other information he deems necessary. Such decision by the administrator shall be final and binding on the parties and no appeal shall lie whatsoever.

History: Contractors Lic. Bd. Reg. 2.13, eff 12 Feb 73.

31.0119 Advertising as contractor-Applicability of provisions.

- (a) Any person who advertises or puts out any sign or card or other device which would indicate to the public that he is, within the meaning of the law, a contractor, who causes his name or business name style to be included in a classified advertisement or directory under a classification which includes the word “contractor” is subject to the provisions of 31.0501 A.S.C.A.
- (b) Any person who advertises as described in subsection (a) of this section under a classification other than his license classification is subject to the provision of this section regardless of whether his operations as a contractor are otherwise exempted.
- (c) “Advertising” as used in this section includes, but not by way of limitation, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper, magazine, or by airwave transmission, or in any directory under a listing of contractor, with or without any limiting qualifications.

History: Contractors Lic. Bd. Reg. 2.14, eff 32 Feb 73.

31.0120 Departure of qualifying individual.

If the individual qualifying by an examination of his experience and knowledge ceases for any reason whatsoever to be connected with the licensee to whom the license is issued, the licensee shall notify the administrator in writing within 10 days from such cessation, disassociation, or unemployment. If a

notice is given within the prescribed time, the license shall remain in force for a length of time to be determined necessary by the administrator for another individual to so qualify.

If the licensee fails to notify the administrator within the 10-day period, at the end of such period his license shall be ipso facto suspended. The license shall be reinstated upon the filing of an affidavit, executed by the licensee or a member of the licentiate firm and filed with the administrator, to the effect that the person originally appearing for examination on behalf of the licensee has been replaced by another individual and that the individual has been qualified by examination and that he can comply with the provisions of this chapter and that he has not been connected with a licensee who has had his license suspended or revoked for reasons that would preclude this individual from personally qualifying as to the good character required of an applicant.

History: Contractors Lic. Bd. Reg. 2.15, eff 12 Feb 73.

31.0121 Fees.

- (a) Pursuant to 31.0505(3) A.S.C.A., the following fees are established as guidelines for the administrator:
- (1) application fee for an original contractor’s license \$25;
 - (2) Annual renewal fee for contractor’s use \$25;
 - (3) Renewal fee if renewal application is made after 1 January and before 30 June of the year applied for \$75;
 - (4) Renewal fee if renewal application is made after 30 June of the year applied for plus one and a half years \$150;
 - (5) Original and annual renewal fee for supplemental specialty contractor’s license (after the initial fee of \$25) \$5;
 - (6) Copy of contractor’s license or supplementary specialty contractor’s license \$1;
 - (7) Examination fees set by the administrator shall not exceed \$100 per person per examination. Outside testing firms may be

contracted with by the administrator to give the examination.

- (b) The sums set out in subsection (a) of this section shall be paid by applicant to the revenue division of the government treasury. In the event the applicant for a license withdraws his application prior to testing of such applicant by the administrator, one-half of the application fee shall be returned to such applicant. If the applicant is refused such license or withdraws his application after tests have been administered, there shall be no refund of the fee.

History: Contractors Lic. Bd. Reg. 2.16, eff 12 Feb 73; and Rule 7-87, eff 18 May 87, § 3.

31.0122 Previously licensed persons-Requirements waiver.

In cases where an applicant for an original license has previously been licensed either as an individual, a member of a license partnership, or as an officer of a licensed corporation and the prior license has never been suspended or revoked and there is no disciplinary proceeding pending against the applicant or any licensee with whom he has been associated, the administrator may waive the requirement for written examination or the information requested in the prescribed application form or any part thereof be given, or that references be furnished.

History: Contractors Lic. Bd. Reg. 2.17, eff 12 Feb 73.

31.0123 Changes-Required notice to administrator.

In addition to duties otherwise provided for by the contractors law and this chapter, the licensee is responsible for the following:

- (a) Licensees shall advise the administrator within 30 days of any change of address.
- (b) A contractor's license issued under the provisions of the licensing law is not transferable. A change in name, business designation, or personnel of a licensee may have the legal effect of attempting to transfer the license and of operating without a license. Therefore, all such changes must be reported to the administrator within 10 days after making any such change.

- (c) Creation of a partnership creates a new legal entity which requires all partners to the partnership to hold proper individual licenses or the partnership itself must be licensed.
- (d) Creation of a corporation creates a new legal person which requires a new license even though 1 or more stockholders have a contractor's license. A license held by a stockholder cannot be authority for the corporation to engage in contracting.
- (e) The dissolution of a corporation which has been licensed operates to terminate the license, and no individual or firm may operate under such license.
- (f) The change of members of a partnership, either by the addition of a partner or partners or by the withdrawal of a partner or partners, creates a new legal entity which cannot operate on the license of the former partnership.
- (g) The administrator must be notified of any change in the officers of a corporation within 10 days after the effective date of such change. The failure of a licensee to notify the administrator of any such change will subject licensee to the revocation or suspension of his license.

History: Contractors Lic. Bd. Reg. 2.18, eff 12 Feb 73.

31.0124 Term of license-Lapsed licenses.

- (a) Each license issued under this article shall be in effect, unless suspended, modified, or revoked pursuant to Chapter 31.05 A.S.C.A., or this article, until 31 December of the year issued. At that date all licenses lapse automatically unless renewal application has been made and fee tendered as prescribed in this article.
- (b) Should a licensee allow a license to lapse by failure to reapply or should a licensee fail to provide the necessary information on such application form or information requested by the administrator, or fail to tender the required fee, such license may be renewed on or before 30 June of the following year without the licensee being required to retake the examinations provided for in this chapter for new applications, provided all other requirements of the law and rules are complied with. Failure to renew on or

before 30 June of the following year and to pay the appropriate renewal fee shall subject the applicant to all procedures set out in this chapter for new applicants.

History: Contractors Lic. Bd. Reg. 2.19, eff 12 Feb 73; and Rule 7-87, eff 18 May 87. § 4.

31.0125 Renewal-Form-Mailing.

The administrator shall mail to every licensee, between 15 Nov and 15 Dec each year, at such licensee's address of record with the administrator, a renewal application form approved by the board. The renewal application form or any accompanying sheet shall contain instructions to the licensee for the completion of said application and the conditions and requirements for a valid renewal of the license. Except as provided in this chapter, the licensee seeking renewal of the license shall answer all questions in the renewal form and comply with all instructions therein; failure to do so may be grounds for refusal to renew such license.

History: Contractors Lic. Bd. Reg., 3.01, eff 12 Feb 73.

31.0126 Renewal-Deadline.

- (a) All licensees must file a renewal application on or before 31 Dec of each year in order to keep the license in good standing. Filing an application after 31 Dec will require payment of double the regular renewal fee. Delinquent renewals may be redeemed on such a basis for 6 months, after which a new application, together with the double fee, is necessary in order to obtain the license.
- (b) The date upon which a renewal application is filed with the administrator shall be determined, if the same is sent by mail, by the date of the postmark appearing upon the envelope containing the application; if personally delivered to the administrator, filing date shall be determined by the date on which the-application is received by the administrator.

History: Contractors Lic. Bd. Reg. 3.02, eff 12 Feb 73.

31.0127 Renewal-Insufficient applications.

In cases in which a renewal application on file as of 1 Jan of any year is insufficient in the respect that it is not accompanied by the proper fee, or the fee if sent

is not accompanied by the prescribed renewal application form, the license shall be suspended and no renewal license issued unless the insufficiency is corrected on or before 30 Jun of the same year. The administrator in such cases shall notify the licensee of such insufficiency, return the fee tendered if improper the renewal application or both, and advise in what respect his renewal application is insufficient.

History: Contractors Lic. Bd. Reg. 3.03, eff 12 Feb 73.

31.0128 Minor defects in application.

In cases in which the renewal application has a minor defect such as where the applicant has failed to sign the application form or to complete it in some minor respect, the applicant shall be deemed to have substantially complied with the requirements for filing renewal applications pending the correction of the discrepancy.

In such cases, the administrator shall hold the tendered fee and notify the licensee of the deduct in his application form, and shall not issue the renewal license until the insufficiency in the renewal form has been corrected. If after a reasonable time, the licensee has still failed to correct such insufficiency, the administrators may return the tendered fee and such license shall be ipso facto suspended.

History: Contractors Lic. Bd. Reg. 3.04, eff 12 Feb 73.

31.0129 Renewal-Fee Payment.

Renewal fees shall be paid at the revenue division of the ASG and shall be according to schedule set out in 31.0121.

History: Contractors Lic. Bd. Reg. 3.05, eff 12 Feb 73.

31.0130 Administrator powers.

Pursuant to 31.0505 (4) A.S.C.A., the administrator may take any lawful administrative action necessary to accomplish the purpose of the Contractors Licensing Law and this chapter. Such action may be, but is not limited to, the follow

- (1) To investigate the qualifications and business operation of applicants for licenses under this chapter or any licensee, including the use of any examination designed to test the qualifications and competence of applicants and their appointed responsible managing employees;

- (2) To issue or renew or to refuse to issue or renew, to limit or modify, or to suspend or revoke any license provided for in this chapter;
- (3) To prescribe forms for completion by applicant to ascertain such information as needed to enforce the provisions of the Contractors Licensing Law and this chapter;
- (4) To prescribe examinations for the testing of applicants and their responsible managing employees;
- (5) To appoint a person, persons, or a department or agency to examine applicants or their responsible managing employees as to their professional competence;
- (6) To require applicants to provide references so that the administrator may obtain information from others regarding the competence or character of the applicant or his responsible managing employee;
- (7) To investigate any complaints or any matters otherwise known to the administrator regarding the competency, character, working habits, or ethics of any licensee or his responsible managing employee and to require an answer from such person or persons regarding such complaints, and to take such action as the administrator may feel justified and as provided in the Contractors Licensing Law and this article after investigation of the complaint or other matter;
- (8) To make such orders as are provided for in the Contractors Licensing Law and this chapter;
- (9) To grant a temporary contractor's license and certify the responsible managing employee for churches and other charitable organizations. A responsible managing employee approved for a temporary license holder may work on no more than one project in a 2 year period. The administrator shall give an oral examination to the contractor and responsible managing employee applicants based on the law, and the plans and specifications of the project. The fees as established by 31.0121 ASAC shall apply to a temporary license. Approval shall be for a class 4 license only. The following sections of this

chapter shall apply to a temporary license: 31.0101 through 31.0106, 31.0109 through 31.0116, 31.0120 through 31.0124, 31.0128, and 31.0130 through 31.0138 inclusive; 31.0124 shall apply but is limited to the project. The license holder shall not advertise nor in any way hold him or herself out to others as an approved contractor or responsible managing employee except as a temporary licensee for this one project. There must be a demonstration that the church or other charity has the required nonprofit status with the tax office of the government treasury.

History: Contractors Lic. Bd. Reg. 4.01, eff 12 Feb 73; and Rule 7-87. eff 18 May 87. § 5.

31.0131 Revocation, suspension, and renewal of licenses.

- (a) The administrator may revoke any license issued hereunder, or suspend the right of the licensee to use such licenses, or refuse to renew any such license for any of the following causes:
 - (1) Knowingly contracting beyond the scope of the license or licenses of licensee;
 - (2) Knowingly entering into a contract with a contractor for work to be performed for which a license is required with a person not duly licensed in the required classification;
 - (3) Workmanship not meeting minimum standards as set out by the Federal Housing Administration or the U.S. National Board of Fire Underwriters, the department of environmental health, or similar recognized bodies, or the administrator;
 - (4) Acting in the capacity of a contractor under any license issued in a name other than as set forth upon the license;
 - (5) The filing of a petition by or against the licensee or adjudication as a bankrupt, for reorganization of or for an arrangement within the meaning of the bankruptcy laws, or the appointment of a receiver or trustee of licensee' property; (6) Conviction of a felony;

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- (7) Any dishonest or fraudulent or deceitful act as a contractor which causes a substantial damage to another;
 - (8) Engaging in any unfair or deceptive act or practice as prohibited by law;
 - (9) Abandonment of any construction project or operation without reasonable or legal excuse;
 - (10) Willful diversion of funds or property received for prosecution or completion of a specific construction project or operation; or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purposes;
 - (11) Willful departure from, or willful disregard of plans or specifications in any material respect without consent of the owner or his duly authorized representative, which is prejudicial to a person entitled to have the construction project or operation completed in accordance with such plans and specifications;
 - (12) Willful violation of any law of the territory, or of any political subdivision thereof, relating to building, including any violation of any applicable rule or regulation of the department of health, or of any applicable safety or labor law;
 - (13) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all his transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer or to permit inspection of such records by the board;
 - (14) When the licensee being a co-partnership or a joint venture permits any member or employee of such copartnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
 - (15) When the licensee being a corporation permits any officer or employee of such corporation who does not hold a license to have the direct management of the contracting business thereof;
 - (16) Misrepresentation of a material fact by an applicant in obtaining a license;
 - (17) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if such failure is without legal excuse;
 - (18) Willful failure in any material respect to comply with this chapter or the rules and regulations promulgated pursuant thereto;
 - (19) Willful failure or refusal to prosecute a subject or operation to completion with reasonable diligence;
 - (20) Willful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with his operations as a contractor when he has the ability to pay or when he has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
 - (21) The false denial of any debt due or the validity of the claim therefor with intent to secure for licensee, his employer, or other person, any discount of such debt or with intent to hinder, delay, or defraud the person to whom such debt is due;
 - (22) Failure to secure or maintain workers' compensation insurance;
 - (23) Knowingly entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter.
- (b) No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years.

History: Contractors Lic. Bd. Reg. 4.02, eff 12 Feb 73; and Rule 12.84. eff 25 Dec 84. § 2.

31.0132 Adverse actions-Notice-Hearing right.

Pursuant to 31.0515 A.S.C.A., any applicant or licensee whose license is refused, revoked, suspended, modified, or limited by the administrator, or who receives other adverse action by the administrator, shall be entitled to a written copy of the administrator's decision setting forth the facts and reasons on which the refusal, revocation, suspension, modification, or limitation, or other adverse action, is based. The decision shall also advise the applicant or licensee of his right to a hearing before the board as provided in this article.

History: Contractors Lic. Bd. Reg. 4.03, eff 12 Feb 73.

31.0133 Hearing before board-Request deadline-Procedure.

Pursuant to 31.516 A.S.C.A., any applicant or licensee who receives any adverse action by the administrator as provided in 31.0515 A.S.C.A., shall be entitled to a hearing before the board if he files a written request for a hearing with the board within 10 days after receiving a copy of the administrator's decision. A request for a hearing shall state which specific findings of fact and reasons of the administrator are contested, and the hearing shall be confined to the issue raised by the request. If no timely request is filed, the administrator's decision shall be final and effective and the case shall not thereafter be heard by the board or reviewed by the court under 31.0136. After a hearing has been held, the board shall dispose of the case on the basis of the evidence adduced.

History: Contractors Lic. Bd. Reg. 4.04, eff 12 Feb 73.

31.0134 Hearing before board-Board powers, action.

- (a) Pursuant to 31.0503(d) A.S.C.A., the board has power to hold hearings, to compel the attendance and testimony of witnesses, to order the production of documents and other tangible evidence, to administer oaths, and to cite for contempt.
- (b) Subsequent to a hearing upon an appeal by a licensee or applicant from an adverse decision by the administrator, the board, pursuant to 31.0503(c) A.S.C.A., has the power to issue or renew or to refuse to issue or renew, to limit or modify, or to suspend or revoke any license

provided for in the Contractors Licensing Law. (Note: The board interprets its power in this respect to hold a hearing de novo of any matter decided by the administrator.) The board may then affirm the decision of the administrator or may decide otherwise as provided by law and this article. The board's policy is to afford great weight to the administrator's decision due to his day-to-day association and contact with the licensees and his administration of the law and rules, giving weight to his experience, competence, and expertise.

History: Contractors Lic. Bd. Reg. 4.05, eff 12 Feb 73.

31.0135 Hearing before board-Decision content-Record of proceedings.

Pursuant to 31.0517 A.S.C.A., any applicant or licensee whose license is limited, refused, suspended, or revoked by the board or who receives other adverse action by the board shall be entitled to a written copy of the board's decision setting forth the facts and reasons on which the limitation, refusal, suspension, revocation, or other adverse action is based. The decision shall also contain a summary of the evidence on which the board's findings of fact are based. This decision, together with the decision of the administrator and any application or other papers filed by the applicant or licensee, shall constitute the record of proceedings before the board. The board may, in its discretion, include in the record any other material property received at the hearing.

History: Contractors Lic. Bd. Reg. 4.06, eff 12 Feb 73.

31.0136 Hearing before board-Judicial review.

Pursuant to 31.0518 A.S.C.A., any applicant or licensee aggrieved by a decision of the board may petition the appellate division of the High Court of American Samoa to review the decision. A copy of the petition shall be served on the board within 30 days. After service of the petition, the board shall file the record of proceedings with the court. The review by the court 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. A petition for review may be filed no later than 10 days after a copy of the board's decision has been served on the applicant or licensee. The filing of a petition shall not stay the

action of the board, but the board may order a stay on appropriate terms.

History: Contractors Lic. Bd. Reg. 4.07, eff 12 Feb 73.

31.0137 Reinstatement of suspended-license.

After suspension of the license upon any of the grounds set forth in this article or in the Contractors Licensing Law, the administrator may reinstate the license upon proof of compliance by the contractor with all provisions or reinstatement.

History: Contractors Lic. Bd. Reg. 4.08, eff 12 Feb 73.

31.0138 Reinstatement of revoked license.

After revocation of a license upon any of the grounds set forth in this article or in the Contractors Licensing Law, the license shall not be reinstated or reissued within a period of 1 year after the final decision of revocation, and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with.

History: Contractor Lic. Bd. Reg. 4.09, eff 12 Feb 73.

II. SCOPE OF LICENSED ACTIVITIES

31.0140 Limitation-Work out of class or qualifications.

- (a) It should be pointed out that licenses issued by the administrator relate only to the contracting of the work itself and have nothing to do with other sections of the territorial law requiring specific professional or trade qualification to do certain types of work. For example, a license as a plumbing contractor does not preclude the necessity of a journeyman plumber doing the actual work nor does a general contractor license preclude the necessity of a journeyman mason, electrician, or plumber from doing the actual work related to those trades, etc. in brief, contractors' licenses are only licenses to contract and as such carry with them no other privileges or rights.
- (b) Nothing in this chapter shall be construed to extend the field and scope of the operations of a licensed contractor to those in which he is not classified and qualified to engage. Failure on the

part of a licensee to observe this rule shall constitute grounds for suspension or revocation of license.

History: Contractors Lic. Bd. Classification of Contractors Licenses. eff 12 Feb 73, (part).

31.0141 General engineering contractor.

A general engineering contractor's license shall authorize the licensee to engage principally in the contracting business in connection with fixed works for any or all of the following: irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports, airways, sewers, and bridges.

History: Contractors Lic. Bd. Classification of Contractors' Licenses. eff 12 Feb 73, (part).

31.0142 General building contractor-Work authorized.

A general building contractor's license shall authorize the licensee to engage principally in the building or superintendence of the building of any structure for support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind. A general building contractor licensee shall be competent in at least 3 unrelated and generally recognized building trades, all of which shall be specified in the license.

History: Contractors Lic. Bd. Classification of Contractors' Licenses, eff 12 Feb 73, (part).

31.0143 General building contractor-Limitation of classification.

A licensee classified as a general building contractor, as defined in 31.0509 A.S.C.A., shall not enter into a contract unless the same requires more than 2 unrelated building trades or crafts or unless he has qualified for the particular specialty classification or classifications by acquiring a specialty license for the trade or craft.

History: Contractors Lic. Bd. Classification of Contractors' Licenses, eff 12 Feb 73. (part).

31.0144 Specialty contractors-Work authorized.

- (a) A specialty contractor's license may be issued the licensee to engage in contracting for 1 or more unrelated and generally recognized building trades for which he is competent, each of which shall be specified in the license. A specialty contractor's license may also be issued authorizing and licensee to engage in contracting for the building of specific types of structures or fixtures for which he is competent, each of which shall be specified in the license.
- (b) A licensee classified as a specialty contractor shall not act in the capacity of a contractor in any classification other than the one in which he is licensed unless the work is incidental and supplemental to the performance of a contract in a classification in which the contractor is licensed

History: Contractors Lic. Bd. Classification of Contractors' Licenses, eff 12 Feb 73, (part).

31.0145 Specialty contractors-Classification.

- (a) The construction industry has untold specialized trades and crafts; to establish separate classifications would require the establishment of many more classifications than set forth in this article. Therefore, the declared policy of the administrator and the board is to establish the classifications set out in 31.0146 et seq. which are more common in the trade and defined the scope of these respective operations. Other specialty classifications not listed in this article will be issued to applicants if their operations are not included in the classifications defined when they meet the qualifications prescribed by the administrator.
- (b) From time to time, as the need arises, the administrator may establish other specialty classifications not included in this article.

History: Contractors Lic. Bd. Classification of Contractors Licenses. eff 12 Feb 73, (part).

31.0146 Boilers, steamfitting.

Steam-fitting and boiler work means to install fire-tube and water-tube steel power boilers, including all steam filling and piping, fittings, valves, gauges, pumps, radiators, convectors, fuel oil tanks, fuel oil

lines, chimneys, flues, heat insulation, and all other devices, apparatus, and equipment appurtenant thereto, in such a manner that power boiler installations and steam fitting can be executed, fabricated, and installed or to do any part or any combination of any thereof.

History: Contractors Lic. Bd. Classification of Contractors Licenses, eff 12 Feb 73, (part).

31.0147 Cabinet work and millwork.

Cabinet work and millwork means to select, cut, surface, join, stick, glue, and frame wood and wood products, in such a manner that, under an agreed specification, acceptable cabinet, case, sash, door, trim, nonbearing partition, and such other mill products as are by custom and usage accepted in the building and construction industry as cabinet and millwork, can be executed, including the placing, erecting, fabricating, and finishing in buildings, structures, and elsewhere of such cabinet and millwork, or to do any part of any combination of any thereof.

History: Contractors Lic. Bd. Classification of Contractors Licenses, eff 12 Feb 73, (part).

31.0148 Carpentry.

Carpentry means to select, grade, cut, join, fabricate, combine, and frame wood and wood products for structural and finish purposes in a structure or building, including forming and pouring concrete foundations, hanging doors and windows, fabricating cabinets and fixtures relative to the structure or building, including any repair thereof, and such other carpentry work and limited remodeling work as is by custom and usage accepted in the building and construction industry as carpentry, or to do any part or combination of any thereof. No plumbing, electrical, or work of any other established contractor can be done under this classification.

History: Contractors Lic. Bd. Licenses. eff 12 Feb 73. (part).

31.0149 Carpet.

Carpet work means specify the preliminary necessary to bring such surfaces to a condition where, under an agreed specification, acceptable fabric floor coverings can be executed thereon to form an acceptable finished floor and to use other materials as are by custom and usage accepted in the building and

construction industry as carpet, or to do any part or combination of any thereof.

History: Contractors Lic. Licenses, eff 12 Feb 73, (parts).

31.0150 Cement and Concrete

Cement and concrete work means to proportion, batch, and mix aggregates consisting of sand, gravel, crushed rock, or other inert materials having clean uncoated grains of strong and durable minerals, cement, and water or to do any part or any combination of any thereof, in such a manner that under an agreed specification, acceptable mass, pavement, flat, and other cement and concrete work can be poured, placed, finished, and installed, including the placing of forms and formwork necessary for the performance of work deformed in this section.

History: Contractors Lic. Licenses, eff 12 Feb 73 (parts).

31.0154 Floor coverings.

Floor covering work means to examine surfaces and specify the preliminary and preparatory work necessary to bring such surfaces to a condition where, under an agreed specification, acceptable finished floors can be installed with the use of composition materials and fabrics and such other materials as are by custom and usage accepted in the building and construction industry as floor coverings, or to do any part or combination of any thereof, not to include fabric carpeting.

History: Contractors Lic. Bd. Classification of Contractors Licenses, eff 12 Feb 73, (part).

31.0155 Masonry.

Masonry means to select, cut, and lay precast cinder or concrete blocks, brick, and other baked clay products, rough, cut, and dressed stone, artificial stone, structural glass brick or block, laid at random or in courses, with or without mortar, or to do any part, or any combination of any thereof, in such a manner that under an agreed specification, acceptable brick and other baked clay products, stone, and structural glass brick or block masonry can be executed, fabricated, and erected, but shall not include those contractors whose sole contracting business is the application of tile to existing surfaces

or the execution, fabrication and erection of poured cement and concrete masonry.

History: Contractors Lic. Bd. Classification of Contractors Licenses, eff 12 Feb 73, (part).

31.0156 Painting.

Painting means to examine surfaces and specify and execute the preliminary and preparatory work necessary to bring such surfaces to a condition where, under an agreed specification, acceptable work can be executed thereon with the use of any or all of the following: paints, pigments, oils, turpentine's, japans, driers, thinners, varnishes, shellacs, stains, fillers, waxes, cement, water, plastics, and other vehicles, mediums, and materials that may be mixed, used, and applied to the surfaces of buildings, edifices, structures, monuments, and the appurtenances thereto, of every kind, type, and description in their natural state or condition, or constructed or fabricated of any material or materials whatsoever that can be painted as are by custom and usage accepted in the building and construction industry as painting.

History: Contractors Lic. Bd. Classification of Contractors' Licenses, eff 12 Feb 73, (part).

31.0157 Pest control, structural.

Structural pest control means to examine a building or structure for damage effected by termites and other similar pests, and to specify the work necessary to bring the building or structure into an adequate condition for occupancy and usage by the removal, treatment, repair, and replacement of the damaged portion into a position commensurate with the quality and condition of the building or structure before such damage occurred, or to do any part or any combination of any thereof in connection therewith.

History: Contractors Lic. Bd. Classification of Contractors Licenses, eff 12 Feb 73, (part).

31.0158 Plaster and lathing.

Plastering and lathing means the coating of surfaces with a mixture of sand, gypsum, plaster, quicklime or hydrated lime and water, or sand and cement and water, or a combination of such other materials as create a permanent surface coating, and which coatings are usually applied with a plasterer's trowel or other mechanical means over any surface which offers a mechanical key for the support of such

coating, or to which such coating will adhere by suction or which has been manufactured to provide a base for such coating. Also, to examine surfaces and specify, select, apply, and affix wood, gypsum, and metal lath, or any other materials or product prepared or manufactured to provide key or suction bases for the support of plaster coatings, in such a manner that, under an agreed specification, acceptable lathing can be executed and installed, including the channel iron work for the support of metal or other fireproof lath work for solid plaster partitions, but plastering and lathing shall not include the erection of any wall, ceiling, or soffit to which such key or suction plaster bases are applied.

History: Contractors Lic. Bd. Classification of Contractors' Licenses, eff 12 Feb 73. (part).

31.0159 Plumbing.

Plumbing means the creating and maintaining of sanitary conditions in buildings, structures, and works where people or animals live, work, and assemble, by providing a permanent means for a supply of safe, pure, and wholesome water, ample in volume and of suitable temperatures for drinking, cooking, bathing, washing, and cleaning, and to cleanse all waste receptacles and like means for the reception and speedy and complete removal from the premises of all fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises.

History: Contractors Lic. Bd. Classification of Contractors' Licenses, eff 12 Feb 73, (part).

31.0160 Refrigeration and air-conditioning.

Refrigeration and air-conditioning means to examine, specify, lay out, install, and maintain devices, machinery, and all such pertinent and appropriate units and parts necessary to the operation and control and/or regulation of air temperatures in refrigerators, refrigerated rooms, and residential, commercial, and industrial buildings.

History: Contractors Lic. Bd. Classification of Contractors' Licenses. eff 12 Feb 73. (part).

31.0161 Roofing, siding, insulation, waterproofing.

Roofing, siding, insulation, and waterproofing means to examine surfaces and specify the preliminary and preparatory work necessary to bring such surfaces to

a condition where, under an agreed specification, acceptable work can be executed and fabricated thereon with such materials or material as to seal, waterproof, and weatherproof such surfaces by such means in such manner as to prevent, hold, keep, and stop water, its derivatives, compounds, and solids from penetrating and passing any such protective material, membrane, roof, siding, surface, or seal, thereby gaining access to material or space beyond such weatherproof, waterproof, or watertight material, membrane, roof, siding, surface, or seal with the use of any or all of the following: asphaltum, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials or any combination of any thereof, that use and custom has established as usable for, or which material or materials are now used as, such waterproof, weatherproof, or watertight seal for such membranes, roofs, and surfaces, but shall not include a contractor whose sole contracting business is the installation of devices or stripping for the internal control of external weather conditions. insulation means to install any insulation media in buildings and structures for the sole purpose of temperature control, in such a manner that buildings and construction insulation can be executed and installed, but shall not include any work other than those processes solely incident to the installation of the insulation media, Waterproofing means to select and apply solutions of rubber, latex, asphaltum, pitch, tar, or other material c'~ materials, or any combination of any thereof, to surfaces to prevent, hold, keep, and stop water, its derivatives, compounds, and solids from penetrating and passing such materials, thereby gaining access to material or space beyond such waterproofing.

History: Contractors Lic. Bd. Classification of Contractors' Licenses, eff 12 Feb 73, (part).

31.0162 Sewer installation.

Sewer installation means to fabricate and lay cast-iron, steel, concrete, vitreous, and nonvitreous pipe which receives the discharge of the building drain at a point 3 feet beyond the outside wall of a building and conveys it to a public sewer, private sewer, or individual sewage disposal system, including the installation of septic tanks and cesspools and the appurtenances thereto, but sewer installation shall not include the work of a plumbing contractor or general engineering contractor as defined in this article.

History: Contractors Lic. Bd. Classification of Contractors Licenses, eff 12 Feb 73, (part).

31.0163 Sheet metal.

- (a) Sheet metal work means to lay out, design, fabricate, and install ducts, registers, air filters, humidity and thermostatic controls, ventilating systems complete with blowers, ducts, plenum chambers, and registers, with or without air filters and humidity and thermostatic controls, in such a manner that air-conditioning and ventilating systems can be executed and installed.
- (b) Sheet metal work means, also, to select, cut, shape, fabricate, and install sheet metal such as cornices, flashings, gutters, leaders, rainwater downspouts, pans, kitchen equipment, duct work, metal flues, etc., or to do any part or any combination of any thereof. Licenses may be obtained for the sheet metal category only.

History: Contractors Lic. Bd. Classification of Contractors' Licenses, eff 12 Feb 73. (part).

31.0164 Steel reinforcing and erection.

Steel reinforcing and erection means to fabricate, place, and tie steel reinforcing bard (rod) and to erect structural steel shapes and plates, of any profile, perimeter, or cross-section, that are or may be used to reinforce concrete or as structural members for buildings and structures, including riveting, welding, and rigging only in connection therewith, in such a manner that steel reinforcing and structural work can be fabricated and erected.

History: Contractors Lic. Bd. Classification of Contractors' Licenses, eff 12 Feb 73, (part).

31.0165 Stone masonry.

Stone masonry means to select, cut, and lay natural or artificial stone, either rough or cut-and-dressed stone, laid at random, with or without mortar, or to do any part or any combination of any thereof, in such a manner that, under an agreed specification, acceptable stone masonry can be executed, fabricated, and erected.

History: Contractors Lic. Bd. Classification of Contractors' Licenses, eff 12 Feb 73. (part).

31.0166 Tanks, structural.

Structural tank work means to fabricate, place, and erect structures for the purpose of retaining liquids, solids, or gasses either above or below the ground, but shall not include the work of a general engineering contractor: as defined in this article.

History: Contractors Lic. Bd. Classification of Contractors Licenses, eff 12 Feb 73, (part).

31.0167 Welding.

Welding means to use gases and electrical energy to create temperatures of sufficient heat to cause metals to become permanently affixed, attached, joined, and fabricated in such manner that welding can be executed.

History: Contractors Lic. Bd. Classification of Contractors Licenses, eff 12Feb73. (part).

III. PAYROLL TAXES

31.0170 Employer identification number.

Building contractors who engage the services of others as employees are required to have an employer identification number (EIN). Apply for such a number at the tax office.

History: Contractors Lic. Bd. Tax and Social Security Requirements, eff 12 Feb 73, § 1.

31.0171 Withholdings required.

- (a) Samoan. Employers are required by law to withhold from wages of employees Samoan taxes in accordance with prescribed rates. Rates are obtainable from the tax office.
- (b) Social Security. Employers are required to withhold from wages of employees social security taxes. Contractors shall contact the local Social Security office.

History: Contractors Lic. Bd. Tax and Social Security Requirements, eff 12 Feb 73, § 2.

31.0172 Employer social security contribution.

The social security laws which are applicable in American Samoa require employers to contribute toward the social security benefits of the employees. Rates of employer contributions are equal to rates of taxes withheld from employees. For more detailed explanation consult the local Social Security office.

History: Contractors Lic. Bd. Tax and Social Security Requirement. eff 12 Feb 73, § 3.

31.0173 Quarterly payment deadlines and reports.

All employers are required by law to file reports and pay taxes to the tax office on or before the last day of the month following the end of each quarter. The quarters end on 31 Mar, 30 Jun, 30 Sep, and 31 Dec. Employers registered with the tax office will be provided quarterly with the necessary reporting forms. Negative reports must be filed even though there has been no reportable activity.

History: Contractors Lic. Bd. Tax and Social Security Requirements, eff 12 Feb 73, § 4.

31.0174 Settling before licensing required.

For licensing purposes it is required that all back tax returns be filed and taxes which have not been paid to the government be paid in full.

History: Contractors Lic. Bd. Tax and Social Security Requirements, eff 12 Feb 73, § 5.

IV. WORKMEN'S COMPENSATION INSURANCE

31.0180 Required before business licensing.

Before obtaining or renewing a business license, any person, partnership, or corporation must first secure workmen's compensation insurance. This type of insurance provides for salary compensation or awards for employees who are injured on the job or while traveling between work and home.

History: Contractors Lic. Bd. Workmen's Compensation Act, eff 12 Feb 73. (part)

31.0181 Where obtained-Employer to pay.

The insurance may be obtained from any insurance carrier licensed to do business in the territory of American Samoa. The cost of the insurance is computed on the basis of the type of work or service to be performed and an estimate of the total annual payroll. The total cost of the insurance must be borne by the employer. The law prohibits any portion of the cost to be collected from or paid by the employees.

History: Contractors Lic. Bd. Workmen's Compensation Act, eff 12Feb73. (part).

31.0182 Noncompliance.

Failure to obtain the compensation insurance or comply with the provisions of the Workmen's Compensation Act may result in the revocation of the business license or a severe fine.

History: Contractors Lic. Bd. Workmen's Compensation Act. eff 12Feb73, (part).

31.0183 Information sources.

More detailed information for employees and employers may be obtained from the workmen's compensation commission or any insurance carrier who handles compensation insurance.

History: Contractors Lic. Bd. Workmen's Compensation Act. eff 12 Feb 73, (part).

V. ALIEN WORKERS

31.0185 Permission to work required-limitation to sponsoring employer.

No alien shall engage in any employment unless the immigration board has previously granted him entry permission for the purpose of the specific employment involved. An alien shall not work for any employer other than his sponsoring employer.

History: Contractors Lic. Bd. Immigration Regulations for Employment of Aliens, eff prior to 1975, § 3.010.

31.0186 Sponsoring employer.

A sponsoring employer may be a U.S. national or an established business in American Samoa. Every alien who receives entry permission from the immigration board for the purpose of engaging in employment must be sponsored by his employer. The alien and his sponsoring employer shall be subject to all requirements, conditions, and duties of aliens and sponsors, respectively, provided in immigration rules, except that a sponsoring employer may be either a United States national or an established business in American Samoa.

History: Contractors Lic. Bd. Immigration Regulations for Employment of Aliens, eff prior to 1975. § 3.020.

31.0187 American Samoan preference.

No entry permission shall be granted for the purpose of employment unless the sponsoring employer satisfies the immigration board that it is not possible

to recruit a qualified American Samoan for the position involved and that reasonable steps are being taken by the sponsoring employer for the eventual replacement of the alien employee by an American Samoan.

History: Contractors Lic. Bd. Immigration Regulations for Employment of Aliens, eff prior to 1975. § 3.030.

31.0188 Employment reports.

Repealed by Rule 7-87, § 6.

VI. *EXCEPTIONS TO CHAPTER*

31.0190 Exceptions to chapter.

This chapter shall not apply to:

- (1) An officer or employee of the United States, the state, or any political subdivision if the project or operation is performed by employees thereof;
- (2) Any person acting as a receiver, trustee in bankruptcy, personal representative, or any other person acting under any or authorization of any court;
- (3) A person who sells or installs any finished products, materials, or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of the structure, or to the construction, alteration, improvement, or repair of personal property;
- (4) Officers of a court acting in their official capacity;
- (5) Regulated public utilities performing construction work incidental to their business;
- (6) Any project or operation for which the aggregate contract price for labor, materials, and all other items is less than \$100. This exemption shall not apply in any case wherein the undertaking is only a part of a larger or major project or operation, whether undertaken by the same or a different contractor or in which a division of the project or operation is made in contracts of amounts less than \$100 for the purpose of evading this chapter or otherwise;
- (7) A registered architect or professional engineer acting solely in his professional capacity;

(8) Any person who engages in the activities herein regulated as an employee with wages as his sole compensation;

(9) Owners or lessees of property who build or improve residential, farm, industrial or commercial building or structures on such property for their own use, or for use by them and the work is performed by the owner and/or grandparents, parents, siblings, or children and do not offer such buildings or structures for sale or lease. In all actions brought under this paragraph, proof of the sale or lease, or offering for sale or lease, of such structure within one year after completion is prima facie evidence that the construction or improvement of such structure was undertaken for the purpose of sale or lease; provided, however, that this shall not apply to residential properties sold or leased to employees of the owner or lessee;

(10) Any co-partnership or joint venture if all members thereof hold licenses issued under this chapter.

History: Rule 12-84. eff 25 Dec 8-4. § 3.

TITLE 31 – CHAPTER 02 – PROFESSIONAL SURVEYORS

Sections:

- 31.0201 Authority.
- 31.0202 Definitions.
- 31.0203 Registration required-Work for ASG.
- 31.0204 Application for registration-
Qualifications-Certificates.
- 31.0205 Renewal of certificates.
- 31.0206 Monuments-Precision standards-Datum
connection-Record contents.
- 31.0207 Record of survey-Filing, examination,
registration.
- 31.0208 Enforcement-Suspension and
revocation.
- 31.0209 Former rules superseded.

31.0201 Authority.

The rules set out in this chapter are issued pursuant to the authority granted the board of registration for professional surveyors by 31.0603 A.S.C.A.

History: Rule 9-76, eff 24 Aug 76, Bd. of Reg. for Prof. Surv. Rules and Regs. § 1.

31.0202 Definitions.

As used in this chapter:

- (1) “professional surveyor” means one who is certified to practice surveying as defined in this section;
- (2) “board” means the board of registration for professional surveyors;
- (3) “chairman” means the chairman of the board, who is by statute the director of public works;
- (4) “responsible charge of work” means the independent control and direction, by the use of skill, initiative, and independent judgment, of the observations, measurements, calculations, and descriptions involved in land survey work;
- (5) “subordinate” means any person directly supervised by a registered professional surveyor and who assists a registered professional surveyor in the practice of land surveying without assuming responsible charge of work;
- (6) “survey branch manager” means that person assigned primary responsibility for surveying functions within the department of public works;
- (7) “Surveying.” Any person practices “surveying” when he is in responsible charge of surveying work and offers or performs any of the following operations:
 - (A) Locates, relocates, establishes, reestablishes, or retraces any property line or boundary of any parcel of land or any road, right-of-way, easement, alignment, or elevation for any fixed works embraced within the practice of civil engineering;
 - (B) Makes a survey for the subdivision or resubdivision of any tract of land;
 - (C) By use of the principle of land surveying determines the position for any monument or reference point which marks a property line, boundary, or corner, or sets, resets, or replaces any such monument or reference point;

- (D) Determines the configuration or contour of the earth’s surface or the position of fixed objects thereon or related thereto by means of measuring lines and angles and applying the principles of trigonometry;
- (E) Does geodetic or cadastral surveying;
- (F) Determines the information shown or to be shown on any map or document prepared or furnished in connection with any one or more of the functions set out in this section;
- (G) Indicates in any capacity or in any manner, by the use of the title “registered professional surveyor” or by any other representation that he practices or offers to practice land surveying in any of its branches;
- (H) Procures or offers to procure land surveying work for himself;
- (I) Manages or conducts as manager, proprietor, or agent, any place of business from which than the practice of surveying from hiring a land surveying work is solicited, performed, or practiced.

History: Rule 9-76, eff 24 Aug 76, Bd. of Reg. for Prof. Surv. Rules and Regs. § 2.

31.0203 Registration required-Work for ASG.

- (a) Any person practicing or offering to practice land surveying in this territory shall submit evidence that he is qualified to practice and shall be registered under this section. It is unlawful for any person to practice, offer to practice, or represent himself as a land surveyor in this territory or to set, reset, replace, or remove any survey monument unless he has been registered or specifically exempted from registration under this section.
- (b) Surveys made exclusively for geological or landscaping purposes, which do not involve the determination of any property line, do not constitute surveying within the meaning of this section.
- (c) In any firm, partnership, company, corporation, or association practicing or offering to practice surveying, at least 1 member, employee, officer,

or director must be individually registered as a professional surveyor pursuant to this section.

- (d) Any firm, partnership, company, corporation, or association organized, or individual from outside the territory and performing contractual surveying work for the ASG shall comply with the following conditions:
 - (1) Field surveys performed shall be done by persons holding full or temporary registration from the board.
 - (2) Computation, compilation, mapping, and other surveying services performed outside the territory shall be done by, or under the direction of, persons duly, registered to perform such services under the jurisdiction of the state or territory in which the work is performed.
- (e) This chapter does not prohibit or prevent an individual, firm, partnership, corporation, or association engaged in any line of business other than the practice of surveying from hiring a registered professional surveyor to perform surveying services incidental to the business of the individual or organization.
- (f) The following are not required to be registered under this section:
 - (1) Officers and employees of the United States Government practicing solely as such officers and employees, and engaged in work incidental and necessary to performance of services for the government of the United States or the ASG;
 - (2) Any employee of the ASG, directly responsible to a registered professional surveyor, insofar as he acts solely in such capacity;
 - (3) Any subordinate to a registered professional surveyor.

History: Rule 9-76, eff 24 Aug 76. Bd. of Reg. for Prof. Surv. Rules and Regs. § 3.

**31.0204 Application for registration-
Qualifications-Certificates.**

- (a) An application for registration as a professional surveyor shall be made to the board on the form prescribed by it, with all statements therein made under oath, and shall be accompanied by the application fee fixed by 31.0604
- (b) The applicant for full-term registration under these provisions shall be a United States citizen, a United States national, an American Samoan, or a permanent resident as defined by 41.0502 (b) and (j) A.S.C.A., or an alien duly authorized residency and employment by the immigration board.
- (c) The applicant shall be at least 25 years of age and he shall be thoroughly familiar with the laws, procedures, and rules governing the survey of lands as set forth in this chapter and in the A.S.C.A.
- (d) The applicant shall have a background of education and experience which will generate a minimum of 70 points on the following scale:
 - (1) For each year of surveying experience approved by the board, 10 points;
 - (2) For each semester-hour credit in surveying or surveying related courses from a technical institute, college, or university, as approved by the board, 3 points;
 - (3) For the highest degree or diploma approved by the board, points as shown:
 - (A) High school, 10 points;
 - (B) Associate, 20 points;
 - (C) Bachelor, 30 points;
- (e) The applicant shall submit the name or names of the registered surveyor or surveyors under whom experience was accumulated.
- (f) The names and addresses of at least 3 responsible persons, each of whom has sufficient knowledge of the applicant to enable the person to certify as to the applicant's integrity and moral fitness to become registered, shall be submitted with the application.

- (g) The applicant shall state on his application that, should he be registered, he will support the constitutions of the United States of America and American Samoa, and that he will faithfully discharge his duties as a registered professional surveyor.
- (h) Examinations for registration shall be held at such times and places within the territory as determined by the board. The examination may be conducted by 1 or more members of the board or 1 or more duly authorized representatives of the board.
- (i) One division of the examination shall test the applicant's knowledge of appropriate mathematical and basic surveying subjects. Another division shall test the applicant's ability to apply his knowledge and experience and to assume responsible charge of work in the professional practice of land surveying. Another division shall require oral examination of the applicant's personal qualifications and attitudes with respect to his profession by the board.
- (j) An applicant failing an examination may, upon payment of another examination fee, be reexamined.
- (k) Any applicant who has passed the examination prescribed by the board shall, upon payment of the registration fee, receive from the board a permanent certificate of registration and a card signifying registration for that calendar year. These shall be signed by the chairman and 1 member of the board and shall signify compliance with this chapter.
- (l) The board may, upon application therefor and the payment of the application and registration fees fixed by statute, issue a certificate of registration without examination to any person who holds a valid, unrevoked, and unexpired certificate of registration or license issued to him by any other state or territory of the United States, when the applicant has received the certificate or license by virtue of an examination comparable to that required for registration pursuant to this chapter and when the applicant's qualifications meet the requirements of this chapter.
- (m) A duplicate certificate of registration to replace one lost, destroyed, or mutilated may be issued by the board, subject to its rules and the payment of the fee therefor as fixed by statute.
- (n) Upon being registered, the professional surveyor shall obtain a seal of the design authorized by the board bearing the registrant's name, certificate number, and the words "Registered Professional Surveyor, American Samoa".
- (o) An unrevoked, unsuspended, and unexpired certificate of registration or renewal certificate, issued by the board is presumptive evidence in all courts and all places that the person named is legally registered under this chapter.
- (p) A temporary certificate of registration as a professional surveyor may be granted, upon payment of the temporary registration fee fixed by statute, if the applicant complies with each of the following provisions:
 - (1) He maintains no place of business in this territory;
 - (2) He is legally and professionally qualified to do land surveying in the state, territory, or country in which he maintains a place of business to do land surveying;
 - (3) His practice as a professional surveyor in this territory does not require more than 60 calendar days in any 1 calendar year; and;
 - (4) He notifies the board of his intention to practice, stating the approximate date when he intends to commence and the approximate length of time he expects to continue. The board, after having determined that the applicant is qualified and has complied with the provisions of this chapter, may issue a temporary certificate to practice for a period not to exceed 60 days.

History: Rule 9-76, eff 24 Aug 76. Bd. of Reg. for Prof. Surv. Rules and Regs. § 4.

31.0205 Renewal of certificates.

- (a) Any certificate issued under this chapter shall remain in effect until 31 Dec next following date of issuance of the certificate.

- (b) Any registered professional surveyor certified under this chapter who wishes to continue the practice of his profession into the next calendar year shall, by 15 Jan of that year, secure from the secretary of the board a renewal slip and pay to the department of revenue an annual renewal fee as established by statute. Upon presentation of receipt of the payment, the secretary of the board shall issue to the registrant a card certifying his right to practice for the next calendar year.
- (c) Any certificate which has expired for nonpayment of the annual renewal fee may be restored, within 1 year from its expiration, under rules prescribed by the board and by payment of the delinquency fee fixed by statute.

History: Rule 9-76. eff 24 Aug 76, Bd. of Reg. for Prof. Surv. Rules and Regs. § 5.

31.0206 Monuments-Precision standards-Datum connection-Record contents.

- (a) Monuments set shall be sufficient in number and durability and efficiently placed so as not to be readily disturbed and to assure, together with monuments already existing, the perpetuation of facile reestablishment of any points or lines of the survey. Any monument set by a registered professional surveyor to mark or reference a point on a property line or land line shall be permanently and visibly marked or tagged with the certificate number of the surveyor setting it, the numbers to be preceded by the letters “R.P.S.” if the monument is set by a public agency, it shall be marked with the recognized initials of the agency.
- (b) All surveys for record shall be made using, as minimum equipment, steel tape graduated to one-hundredth of a foot (0.01 ft.) or 1 millimeter and angle-measuring instruments with verniers having a least count of 1 minute of arc. All measurements shall be made in accordance with standard survey practice. Minimum precision, as computed by latitudes and departures, acceptable for recording of the survey shall be as follows:
 - (1) Land which is generally clear or which has an elevation difference of less than 50 feet between the highest and lowest points on

the boundary shall be surveyed to an error of closure of not less than 1 part in 5,000.

- (2) Land which is more than 50% bush or has an elevation difference of more than 50 feet between the highest and lowest points on the boundary shall be surveyed to an error of closure not less than 1-part in 3,500.
 - (3) Land which has an elevation difference of more than 200 feet between the highest and the lowest points on the boundary shall be surveyed to an error of closure of not less than 1 part in 2,000.
 - (4) Vertical closures shall not exceed .05 feet times the square root of the traverse distance in miles.
- (c) All surveys shall be connected to the American Samoa Datum. A record of survey may not be registered unless it also shows, or is accompanied by, a map showing the control scheme through which the coordinates were determined from points of known coordinates, and contains within the map or along the margin thereof, grid ticks showing the orientation of the map to the American Samoa Datum.
 - (d) A record of survey shall be a map, or copy thereof, filed as provided in 31.0207, legibly drawn on plastic drafting film or other dimensionally stable media, with outside dimensions of 18 and 24 inches (450 and 600 mm) or 12 and 18 inches (300 and 450). The left edge shall have a margin of 1-1/2 inches (40mm), with a margin of one-half inch (15 mm) on the other 3 sides. A record of survey is not required of any survey which is preliminary in nature.
 - (e) The record of survey shall show the following:
 - (1) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location, and giving other data relating thereto;
 - (2) Length and direction of lines and witness monuments, and both a graphic and written scale of the map (when azimuths are used, the origin shall be grid south);

- (3) Name of land in which the parcel is located or of which it is a part, together with ties to adjoining tracts or parcels;
 - (4) Certificates required by subsection (f) and (g) of this section;
 - (5) Coordinate ticks referenced to the American Samoa Datum;
 - (6) An arrow showing the north direction; and
 - (7) Any other data necessary for the intelligent interpretation of the various items and locations of points, lines, and areas shown.
- (f) The surveyor shall affix to the map a statement or stamp in the general form of the following:

“SURVEYOR’S CERTIFICATE

This map correctly represents a survey, having a precision of 1 in..... as computed by latitudes and departures, and was made by me or under my direction in conformance with the Code and Rules of the Territory of American Samoa at the request of in..... 19.....

Signed and Sealed

Registered Professional Surveyor No.....

- (g) In the case of survey prepared for registration of title to land pursuant to 37.0101 through 37.0104 A.S.C.A., the surveyor shall submit to the territorial registrar a certificate signed by the pulenu’u of the village in which or nearest to which the land is located to the effect that he gave public oral notice to provide other interested landowners opportunity to be present at the survey said statement to be in the general form of the following:

“PULENU’U’S CERTIFICATE

I, as Pulenu’u of the village of:..... in which or nearest to which the land shown on this map is located, certify that I gave public oral notice in the village at a meeting of the chiefs of the village of the time and place of the intended survey and that other interested landowners were entitled to be present during the survey, or any part thereof.

Signed.....

Pulenu’u”

History: Rule 9-76, eff 24 Aug 76. Bd. of Reg. for Prof. Surv. Rules and Regs. § 6.

31.0207 Record of survey-Filing, examination, registration.

- (a) Within 90 days of the establishment of points or lines, the registered professional surveyor must file with the survey branch manager copies of the record of survey relating to land boundaries or property lines which disclose any of the following:
 - (1) Material evidence which, in whole or in part does not appear on any map or record previously filed with the survey branch or the registrar of lands;
 - (2) A material discrepancy with such records;
 - (3) Evidence that, by reasonable analysis, might result in alternate positions of lines or points; or
 - (4) The establishment of 1 or more lines either shown or not shown on such map, the positions of which are not ascertainable from an inspection of such map without trigonometric calculations. A copy of any record of survey filed with the survey branch manager, shall, after being examined by him, be filed with the territorial registrar.
- (b) Within 15 days of the date of submission of a record of survey, or within such additional time as may be reasonably necessary, the-survey branch manager shall examine it with respect to:
 - (1) its accuracy of mathematical data and completeness of information as required in 31.0206 (e);
 - (2) its conformity to other records of satisfactory evidence of errors of such other records;
 - (3) its compliance with other provisions of this chapter.

- (c) If the survey branch manager finds the record of survey to be satisfactory he shall endorse on each copy the following certificate and present 2 copies to the territorial registrar for registration:

“MANAGER’S CERTIFICATE

This map has been examined by me or under my direction for conformance with the laws of American Samoa and the rules of the board of Registration for Professional Surveyors, and is hereby approved for registration this day of.....19.....

Signed:

Survey Branch Manager, DPW”

- (d) If the survey branch manager finds the record of survey to be not in compliance with this chapter and the laws of American Samoa, he shall within 15 days of date of submission return it to the surveyor who presented it together with a written statement of correction required for compliance.
- (e) If matters appearing on the record of survey cannot be agreed on by the survey branch manager and the registered professional surveyor within 30 days of the date of submission, a list of discrepancies shall be noted on the maps by the survey branch manager, and 2 copies with such notation shall be forwarded by him to the territorial registrar for registration.
- (f) The copy of the record of survey filed with the territorial registrar shall be securely fastened by him into a suitable book provided for the purpose. He shall keep proper indexes of such records of survey by district, county, village, name of land, and name of owner. It shall be proper procedure for the territorial registrar to keep 1 copy for public reference and another for safekeeping.
- (g) Prior to filing the record of survey, the territorial registrar shall endorse the record with a certificate in the general form of the following:

“REGISTRAR’S CERTIFICATE

Filed for record this..... day of19..... at.....past..... o’clock M, in Book Number Page.. , at the request ofof..... village.

Signed:.....

Territorial Registrar”

History: Rule 9-76. eff 24 Aug 76, Bd. of Reg. for Prof. Surv. Rules and Regs. § 7.

31.0208 Enforcement-Suspension and revocation.

- (a) The board shall, within its statutory limitations, enforce all provisions of this chapter and pursue the prosecution, where applicable, of all violators of this chapter.
- (b) By majority vote, the board may revoke or suspend for a period not to exceed 2 years the certificate of any professional surveyor whom it finds has committed:
 - (1) any fraud or deceit in obtaining his registration;
 - (2) any fraud or incompetency in his practice of surveying; or
 - (3) any violation of this chapter.
- (c) The adjudication of mental illness, or the voluntary commitment to a hospital for a mental illness of any registered professional surveyor, shall constitute a suspension of the right to practice, such suspension to continue until restoration to or declaration of sanity or mental
- (d) The board may reissue a license to any person whose license has been revoked if a majority of the board votes in favor of such reinstatement.

History: Rule 9-76, eff 24 Aug 76, Bd. of Reg. for Prof. Surv. Rules and Regs. § 8.

31.0209 Former rules superseded.

All previously adopted rules of the board are hereby superseded in their entirety and are no longer in effect.

History: Rule 9-76, eff 24 Aug 76, Bd. of Reg. for Prof. Surv. Rules and Reg. § 9.

TITLE 31 – CHAPTER 03 – TRADESMEN

Sections:

- 31.0301 Authority.
- 31.0302 Purpose of board and provisions.

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- 31.0303 Tradesmen-contractors board jurisdictions-Laborer supervision-Industry structures.
- 31.0304 Definitions.
- 31.0305 Certificate required.
- 31.0306 Application-Content.
- 31.0307 Application-Aliens.
- 31.0308 Application-Insufficient or incomplete.
- 31.0309 Examination-Content.
- 31.0310 Examination-Notification of results.
- 31.0311 Experience requirement.
- 31.0312 Fee.
- 31.0313 Duplicate certificate.
- 31.0314 Deposit, use of fees.
- 31.0315 Seal of the board.
- 31.0316 Minutes.
- 31.0317 Temporary certificate.
- 31.0318 Term of certificates.
- 31.0319 Expiration of certificates-Renewal.
- 31.0320 Annual renewal-Fees.
- 31.0321 Refusal, revocation, suspension, modification, or limitation grounds.
- 31.0322 Powers of the board.
- 31.0323 Hearing and disciplinary powers-Hearing procedures.
- 31.0324 Adverse decisions of the board- Record of proceedings.
- 31.0325 Judicial review.
- 31.0326 Reinstatement after suspension.
- 31.0327 Reinstatement after revocation.

incompetent, inexperienced, unlawful, and fraudulent acts of tradesmen. It is anticipated that the administration of the laws and rules will upgrade professional competency and cultivate responsibility within the tradesmen vocation.

History: Bd. of Tradesmen Examiners Regs. eff 28 Dec 72, Reg. 1.02.

31.0303 Tradesmen-contractors board jurisdictions-Laborer supervision-Industry structures.

The board of tradesmen examiners views its responsibilities in relation to the contractors licensing board as follows:

- (a) The contractors licensing board’s primary interest is as set out in 31.0102. Such board is thus concerned with the protection of the general public from unqualified or unscrupulous contractors. Of primary importance, then, is the contractor’s:
 - (1) business skill and knowledge of legal requirements to engage in business;
 - (2) integrity and character; and
 - (3) professional competence, if holder of a specialty license, or the competency of those responsible managing employees who qualify the contractor for license by taking and passing the specific examinations as set out in the Contractors Licensing Law and rules.
- (b) Next, the board of tradesmen examiners is interested in the tradesmen, foremen, and general foremen who are licensed by them and who work at a trade immediately under the contractor or the responsible managing employee.
- (c) All employees who are not contractors, responsible managing employees, or tradesmen shall be designated as laborers. All laborers shall be under the direct supervision of the tradesmen, foremen and general foremen, responsible managing employee, or the contractor.
- (d) In a pyramid of construction employees, tradesmen are above laborers but below the

31.0301 Authority.

The board of tradesmen examiners derives its authority from Chapter 31.07 A.S.C.A., in general and 31.0704 A.S.C.A., Board-Powers, in particular. The rules codified in this chapter are promulgated pursuant to 31.0704(1) A.S.C.A.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 1.01.

31.0302 Purpose of board and provisions.

The board of tradesmen examiners construes its purpose as one of protecting the health, safety, and general welfare of all these persons dealing with persons who are engaged in supplying of services of tradesmen as defined in 31.0705 A.S.C.A. The laws and rules promulgated pursuant to the law are designed to provide a practical protection against

responsible managing employees of the contractor, as follows:

- (1) Contractor: license by contractors licensing board;
- (2) Responsible managing employee: tested by contractors board as to specific knowledge of certain building trades; operates as superintendent;
- (3) Tradesmen, foremen, and general foremen: examined by board of tradesmen examiners;
- (4) Laborers: those workers who must work under the supervision of tradesmen, responsible managing employees, or contractors.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 1.03.

31.0304 Definitions.

When used in this chapter, the following words shall be defined as follows:

- (a) “Board” means the board of tradesmen examiners.
- (b) “Certificate” means the tradesmen’s certificate issued by the board to an applicant who has fulfilled all qualifications for any trades set out in 31.0705 A.S.C.A.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 1.04.

31.0305 Certificate required.

No person shall conduct any business or operate as a tradesman without being first licensed by the board and having a tradesmen’s certificate issued for the trade or trades approved by the board, nor shall such person put out any sign or card or other device, or advertise by news media, telephone yellow pages, or otherwise, which indicates to the public that he is a certified tradesman. This rule does not prevent any person who has not been issued a certificate from performing work on his own buildings, provided there has been compliance with all the applicable provisions of the A.S.C.A., especially with regard to building permits and inspections. This rule does not prevent a certified tradesman from forming a

partnership or other association with persons who are not tradesmen provided the name of the certified tradesman appears as the tradesman on all instruments of service, and in no case may other members of the partnership be designated as tradesmen. In the event such certified tradesman forms a partnership or other association for contracting services, such tradesmen shall place themselves within the purview of Chapter 31.05 A.S.C.A., Contractors Licensing Law, and rules applicable thereto.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.01.

31.0306 Application-Content.

All persons desiring to be licensed as a tradesman must apply to the board upon a form prepared and supplied by the board and must pay the fee required by 31.0312. In addition to other information deemed necessary by the board, the applicant shall supply the following:

- (a) Name, village, post office box number, nationality, place of birth;
- (b) The amount of experience possessed by the applicant, the names and dates the applicant has been employed in the past 5 years, and names of employers;
- (c) The names of 3 references of whom the board may inquire as to the workmanship and character of applicant;
- (d) Whether or not the applicant has been charged or convicted of a crime (other than minor traffic convictions), the charge, the dates, and the disposition of such case;
- (e) Whether the applicant has ever had a tradesmen certificate before; if so, the period such applicant held such license and the reasons such license is not now held;
- (f) Whether or not the applicant has ever been associated with the holders of a contractor’s license which was suspended, revoked, limited, or modified.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.02.

31.0307 Application-Aliens.

Before considering an application by an alien the board shall require evidence from such alien that all immigration laws and rules have been complied with for such alien's entry into American Samoa and his employment within American Samoa.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.03.

31.0308 Application-Insufficient or incomplete.

- (a) Each applicant for a tradesmen certificate shall, before a certificate may be issued to him, give the information required in the application form as prescribed by the board, furnish the references required as to the applicant's ability to perform the trade applied for, the applicant's character and trade reputation, and pay the required fee. The board has the authority to refuse to issue a license to any applicant who fails without good reason or refuses to give the information so requested, or to furnish the required references.
- (b) Such incomplete or insufficient application shall be returned to the applicant with the tendered fee and the reason for such refusal to issue made known to the applicant.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.04.

31.0309 Examination-Content.

- (a) Examinations for the trade or trades applied for shall be administered by the board, a designated member of the board, or another person designated by the board. Examinations shall be in such form as the board prescribes and shall be based upon academic and/or practical experience and generally recognized principles of the trade or trades applied for. As such the examination may be written and demonstrative. The examiner may require samples of work, if appropriate, or may require the doing of appropriate tasks for grading by the examiner.
- (b) The examination prescribed by the board may be in lieu of the final examination for government employees who have completed the 3-year on-the-job training program for specific trades as described in the publication of the ASG entitled "Standard Titles and Definitions for Upgraded

Positions, Supervisory Titling Procedures and In-Service Training Programs," a copy of which is attached to the rules codified in this chapter.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.05.

31.0310 Examination-Notification of results.

Each applicant shall be notified in writing by the board as to whether he has passed or failed. If a failing grade is issued, such notification shall give specific reasons for such failure in such form so that the applicant may best prepare to retake the examination.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.06.

31.0311 Experience requirement.

The applicant for a tradesmen certificate shall furnish evidence of having completed a course from an approved trades school and have had at least 1 year experience in such trade or have had at least 3 years experience in such trade, and be capable of providing proof of competency in the trade, and pass the examination prescribed by the board.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.07.

31.0312 Fee.

The fees prescribed by this chapter are fixed by the board as follows:

- (a) Application for examination \$1;
- (b) Original nongovernment trade certificate \$5;
- (c) Duplicate certificate \$3;
- (d) Renewal of a certificate \$1;
- (e) Renewal if application filed after 1 Mar \$2;
- (f) Temporary permit \$5;
- (g) Special certificate for ASG employee to perform government work None.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.08.

31.0313 Duplicate certificate.

A duplicate certificate to practice a trade, replacing one which has been lost, destroyed, or mutilated, may be issued subject to the rules of the board. The

duplicate certificate fee fixed by the board shall be charged for such issuance.

History: Bd. of Tradesmen Examiners Regs, eff 28 Dec 72, Reg. 2.09.

31.0314 Deposit, use of fees.

All fees collected pursuant to 31.0312 shall be deposited in a special fund which shall be available for the payment of any expenses incurred in the administration of this chapter. Any sums in excess of those necessary to pay such expenses shall be dispensed as otherwise provided by law at the end of each fiscal year.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.10.

31.0315 Seal of the board.

The board shall adopt a seal for its own use. The seal used shall have the words, “The Board of Tradesmen Examiners of American Samoa”. The secretary of the board shall have the care and custody of the seal.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.11.

31.0316 Minutes.

The secretary shall keep an accurate record of all proceedings of the board which will be open to inspection by the public.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.12.

31.0317 Temporary certificate.

This chapter does not prevent a person from without the territory from performing work within the territory providing that he presents satisfactory evidence to the board that he is competent to practice the trade and the board issues a temporary certificate to him for the stipulated work, and provided the individual who is to receive the certificate has received the ASG’s permission to reside in the territory for a particular period. It is expressly understood that such temporary certificate shall be for a specific job only, of a short duration (not to exceed 1 year), and that the tradesman is in American Samoa specifically to do only such job.

History: Bd. of Tradesmen Examiners Regs. eff 28 Dec 72, Reg. 2.13.

31.0318 Term of certificates.

Certificates to practice a trade will remain in full force until revoked or suspended for cause, or until they expire as provided in this chapter.

History: Bd. of Tradesmen Examiners Regs, eff 28 Dec 72, Reg. 2.14.

31.0319 Expiration of certificates-Renewal.

All certificates issued under authority contained in PL 12-21 shall expire on 31 Dec of the calendar year in which issued. To renew an unexpired certificate, the certificate holder shall, before the time at which the certificate would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by 31.0312. A 2-month grace period will be applicable to this rule. Special certificates issued to ASG tradesmen for use on government work shall not expire but will be in effect as long as the person is employed by the government as a tradesman.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 2.15.

31.0320 Annual renewal-Fees.

Renewal applications shall be made to the board on or before 31 Dec of each year and shall be made upon a form prescribed by the board, and the renewal fee shall be tendered with the application for renewal. Filing an application after 1 Mar will require payment of double the regular renewal fee.

History: Bd. of Tradesmen Examiners Regs, eff 28 Dec 72, Reg. 3.01.

31.0321 Refusal, revocation, suspension, modification, or limitation grounds.

Pursuant to 31.0708 A.S.C.A., a certificate provided for in this chapter may be refused, revoked, suspended, modified, or limited for any I or a combination of the following grounds:

- (1) The conviction of a crime in connection with the trade practiced by tradesmen licensed under this chapter. The record of conviction or certified copy thereof by the clerk of the court or judge in whose court the conviction is obtained is conclusive evidence of the conviction;
- (2) Wilful and deliberate violation of applicable law or duly promulgated rules of the board concerning practice of a trade;

- (3) Fraud or misrepresentation in obtaining a certificate under this chapter;
- (4) Aiding and abetting the practice of any trade by any person not authorized to practice the trade under the provisions of this chapter;
- (5) Negligence or incompetence demonstrated in the practice of a trade or occupation subject to the provisions of this chapter.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 4.01.

31.0322 Powers of the board.

In addition to other powers of the board, either enumerated or implied, the board possesses the power to do the following acts:

- (1) To investigate the qualifications of applicants for certificates pursuant to this chapter including the use of any examination designed to test the qualifications and competence of applicants;
- (2) To issue or renew or to refuse to issue or renew, to limit or modify, or to suspend or revoke any certificate provided for in this chapter;
- (3) To prescribe forms for completion by applicant to ascertain such information as needed to enforce the provisions of the Board of Tradesmen Law and this chapter;
- (4) To prescribe examinations for the testing of applicants as to their knowledge and ability relating to the trade applied for;
- (5) To appoint a person, persons, or a department or agency to examine applicants as to their competence in the trade applied for;
- (6) To acquire applicants to provide the names of references so the board may obtain information from others regarding the competence or character of the applicant;
- (7) To investigate any complaints made to the board or otherwise known by the board regarding the competency, character, work habits, or ethics of any applicant or certificate holder and to require an answer from such applicant or certificate holder regarding such complaint, and to take such action as the board deems justified, as provided for in the Tradesmen Law and this

chapter after investigation of the complaint or other matters known to the board;

- (8) To make such orders as are deemed necessary to effectuate the purposes of the Board of Tradesmen Law and this chapter;
- (9) To investigate whether employers are employing persons as tradesmen who have not been certified as tradesmen by the board;
- (10) To investigate as to whether those persons advertising as tradesmen have been certified as such by the board.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 4.02.

**31.0323 Hearing and disciplinary powers-
Hearing procedures.**

- (a) Pursuant to 31.0704 (4) A.S.C.A., the board has the power to hold hearings to compel the attendance and testimony of witnesses, to order the production of documents or other tangible evidence, to administer oaths, and to cite for contempt.
- (b) Subsequent to such hearing the board has the power to, pursuant to 31.0704 (3) A.S.C.A., issue, renew, refuse, limit, modify, suspend, or revoke any certificate provided for in this chapter.
- (c) The hearing procedures in all disciplinary proceedings shall be the procedures set out in the Administrative Procedures Act, Chapter 4.10 A.S.C.A.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 4.03.

31.0324 Adverse decisions of the board-Record of proceedings.

Any applicant whose application is denied, refused, limited or modified, or any person whose certificate is modified, limited, suspended, revoked, or whose renewal application is refused, denied, limited, or modified, shall be entitled to a written copy of the board's decision setting forth the facts and reasons on which such refusal, denial, modification, Limitation, suspension, revocation, or other adverse decision is based. Such decision shall contain a summary of the evidence on which the board's findings of facts are

based. This decision and any other papers filed at the hearing or with the application shall constitute the record of proceedings before the board.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 4.04.

31.0325 Judicial review.

Judicial review of any adverse decision-by the board shall be in accordance with the provisions relating to judicial review in the Administrative Procedures Act, Chapter 4.10 A.S.C.A.

History: BA. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 4.05.

31.0326 Reinstatement after suspension.

After suspension of the certificate for any of the reasons set forth in this chapter or in. the Board of Tradesmen Law, the board may reinstate the certificate upon proof of compliance by the certificate holder with all provisions for issuance of a new certificate.

History: Bd. of Tradesmen Examiners Regs. eff 28 Dec 72, Reg. 4.06.

31.0327 Reinstatement after revocation.

After revocation of a certificate for any of the reasons set forth in this chapter or within the Board of Tradesmen Law, the certificate shall not be reinstated or reissued within a period of 1 year after the final decision of revocation, and then only on a proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with.

History: Bd. of Tradesmen Examiners Regs., eff 28 Dec 72, Reg. 4.07.

TITLE 31 – CHAPTER 04 – HEALTH SERVICES

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I. GENERAL PROVISIONS

31.0401 Authority.

The rules codified in this chapter are promulgated pursuant to the authority granted the health services regulatory board by 31.1005 and 31.1006 A.S.C.A.

History: Rule 2-88. eff 27 Mar 88, § 1.

31.0402 General definitions.

For the purposes of this chapter, unless the context clearly requires otherwise:

- (a) “Attorney General” means the attorney general of American Samoa.
- (b) “Board” means the health services regulatory board established by 31.1002(a) A.S.C.A.
- (c) “Collaboration” means the process in which health professionals jointly contribute to the health care of patients with each collaborator performing actions he or she is licensed or otherwise authorized to perform pursuant to this rule. Within this definition:
 - (1) “General collaboration” means that each collaborator is available to the other collaborator for consultation either in person or by a communication device, but need not be physically present on the premises at the time the actions are performed.
 - (2) “Direct collaboration” means that each collaborator is available on the premises and within vocal communication, either directly or by a communication device, of the other collaborator.
 - (3) “Immediate collaboration” means that each collaborator is physically present in the room where the actions are being performed and is performing the actions or guiding and directing the performance of the actions.
- (d) “Day” means the calendar day unless otherwise specified in this chapter.
- (e) “Governor” means the governor of American Samoa.
- (f) “Health occupation” means a practice that is regulated under the chapter.
- (g) “Health professional” means a person licensed under this chapter to practice a health occupation in the territory.
- (h) “Impaired health professional” means a health professional who is unable to perform his or her professional responsibilities reliably due to a mental or physical disorder, excessive use of

alcohol, or habitual use of any narcotic or controlled substance or any other drug in excess of therapeutic amounts or without valid medical indication.

- (i) “Person” means an individual, corporation, trustee, receiver, guardian, representative, firm, partnership, society, school, or other entity.
- (j) “Protocol” means a written agreement between an advanced registered nurse and a collaborating physician, osteopath, dentist, or other appropriate health professional as required, which shall outline, if necessary, the diagnostic and therapeutic approaches to be considered, and which shall outline actions to be taken in providing medical care to patients in accordance with the minimum levels of collaboration required by this rule, except when the parties agree to established higher of collaboration for specific actions or circumstances.
- (k) “State” means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States.
- (l) “Territory” means the Territory of American Samoa.
- (m) “Director of health” means the director of the Department of Health of American Samoa.

History: Rule 2-88. eff 27 Mar 88, § 1.

31.0403 Definitions of health occupations.

For purposes of this chapter, unless the context clearly requires otherwise:

- (a) “Practice of acupuncture” means the insertion of needles, with or without accompanying electrical or thermal stimulation, at a certain point or points on or near the surface of the human body to relieve pain, normalize physiological functions, and treat ailments or conditions of the body. The practice of acupuncture by a non-physician acupuncturist shall be carried out in general collaboration with a licensed physician, osteopath, or dentist.
- (b) “Practice of advanced registered nursing” means the performance of advanced-level nursing actions by a nurse midwife, a nurse anesthetist,

or a nurse-practitioner certified pursuant to this chapter which, by virtue of post-basic specialized education, training, and experience, are proper to be performed. The advanced registered nurse may perform actions of nursing diagnosis and nursing treatment of alterations of the health status. The advanced registered nurse may also perform actions of medical diagnosis and treatment, prescription, and other functions which are identified in this chapter and carried out in accordance with the procedures required by this chapter.

- (c) “Practice of dental hygiene” means:
- (1) the performance of a preliminary dental examination; a complete prophylaxis, including the removal of any deposit, accretion, or stain from the surface of a tooth or a restoration; the polishing of a tooth or of a restoration;
 - (2) the charting of cavities during preliminary examination, prophylaxis, or polishing;
 - (3) the application of a medicinal agent to a tooth for a prophylactic purpose;
 - (4) the taking of a dental X-ray;
 - (5) the instruction of individuals or groups of individuals in oral health care; and
 - (6) any other functions included in the curricula of approved educational programs in dental hygiene.

A dental hygienist may perform the activities listed in paragraphs (c)(1) through (c)(6) of this subsection only under the general supervision of a licensed dentist, in the dentist’s office or any public school or institution rendering dental services. The board may issue rules identifying other specific functions which may be performed by a dental hygienist, and authorizing levels of supervision for the performance of these additional functions by a dental hygienist. The license of a dentist who permits a dental hygienist, operating under that dentist’s supervision, to perform any operation other than that permitted under this paragraph,

may be suspended or revoked, and the license of a dental hygienist violating this paragraph may also be suspended or revoked, in accordance with the provisions of this chapter.

- (d) The “Practice of dental therapy” means the application of certain diagnostic and therapeutic dental procedures under the general supervision of a dentist. Such procedures may include a combination of any of the following: the cleaning of teeth, individual or group instruction in oral hygiene, topical application of medicaments, examining patients and charting their dental conditions, taking of dental X-rays, performance of restorative work with application of composites in classes I, II and III, (application of class IV composites and TMS pins is not allowed), simple suturing, pulp capping and pulpotomy.

Simple extractions of deciduous and permanent teeth under local anesthesia may be performed on individuals under the age of 16, but such procedures may be carried out only after direct evaluation of the patient and clearance to do so by a dentist. Interpretation of dental X-rays is to be done only by a dentist or medical radiologist.

For the purpose of subsection, the term “general supervision” means the performance by a dental therapist of procedure permitted by paragraph (d) of this subsection based on instructions given by a licensed dentist, but not requiring the physical presence of the dentist during the performance of these procedures. The license of a dentist who permits a dental therapist, operating under that dentist’s supervision, to perform any operation other than that permitted under this paragraph, may be suspended or revoked, and the license of a dental therapist violating this paragraph, may also be suspended or revoked, in accordance with the provisions of this chapter.

- (e) “Practice of dentistry” means:
- (1) the diagnosis, treatment, operation, or prescription for any disease, disorder, pain, deformity, injury, deficiency, defect, or other physical condition of the human teeth,

gums, alveolar process, jaws, maxilla, mandible, or adjacent tissues or structures of the oral cavity, including the removal of stains, accretions, or deposits from the human teeth;

- (2) the extraction of a human tooth or teeth;
 - (3) the performance of any phase of any operation, relative or incident to the replacement or restoration of all or a part of a human tooth or teeth with an artificial substance, material, or device;
 - (4) the correction of the malposition or malformation of the human teeth;
 - (5) the administration of appropriate anesthetic agent, by a dentist properly trained in the administration of the anesthetic agent, in the treatment of dental or oral diseases or physical conditions, or in preparation for or incident to any operation within the oral cavity;
 - (6) the taking or making of an impression of the human teeth, gums, or jaws;
 - (7) the making, building, construction, furnishing, processing, reproduction, repair, adjustment, supply or placement in the human mouth of any prosthetic denture, bridge, appliance, corrective device, or other structure designed or constructed as a substitute for a natural human tooth or teeth or as an aid in the treatment of the malposition or malformation of a tooth or teeth;
 - (8) the use of an X-ray machine or device for dental treatment or diagnostic purposes, or the giving of interpretations or readings of dental X-rays; or
 - (9) the performance of any of the clinical practices included in the curricula of accredited dental schools or colleges or qualifying residency or graduate programs in dentistry.
- (f) “Practice of dietetics and nutrition” means the application of scientific principles and food management techniques to assess the dietary or

nutritional needs of individuals and groups, make recommendations for short-term and long-term dietary or nutritional practices which foster good health, provide diet or nutrition counseling, and develop and manage nutritionally sound dietary plans and nutrition care systems consistent with the available resources of the patient or client.

Nothing in the paragraph shall be construed as preventing or restricting the practices, services, or activities of dietetic technicians and dietetic assistants working under the supervision of a licensed dietitian or nutritionist, other health professionals licensed pursuant to this chapter, or other persons who in the course of their responsibilities offer dietary or nutrition information or deal with nutritional policies or practices on an occasional basis incidental to their primary duties, provided that they do not represent by title or description of services that they are dietitians or nutritionists.

- (g) “Practice of medicine” means the application of scientific principles to prevent, diagnose, and treat physical and mental diseases, disorders, and conditions and to safeguard the life and health of any woman and infant through pregnancy and parturition.
- (h) “Practice of occupational therapy” means the evaluation and treatment of individuals whose ability to manage normal daily functions is threatened or impaired by developmental deficits, the aging process, poverty and cultural differences, physical injury or illness, or psychological and social disability, utilizing task-oriented activities to prevent or correct physical or emotional disabilities and enhance developmental and functional skills rendered on the prescription of or referral by a licensed physician, osteopath, dentist, or by a licensed registered nurse certified to practice as an advanced registered nurse as authorized pursuant to Section 2 of this chapter.

Specific therapeutic and diagnostic techniques used in occupational therapy include:

- (l) self-care and other activities of daily living;

- (2) developmental, perceptual-motor, and sensory integrative activities;
- (3) training in basic work habits;
- (4) prevocational evaluation and treatment;
- (5) fabrication and application of splints;
- (6) selection and use of adaptive equipment, and exercise and other modalities to enhance functional performance; and
- (7) performing and interpreting manual muscle and range of motion tests.
- (8) an individual working as an occupational therapy assistant pursuant to this chapter may assist in the practice of occupational therapy under the supervision of or in consultation with a licensed occupational therapist.
- (9) nothing in this paragraph shall be construed as preventing or restricting the practices, services, or activities of an occupational therapy assistant who works only under the direct supervision of a licensed occupational therapist, and whose activities do not require advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

An individual licensed to practice occupational therapy pursuant to this chapter may apply to the director of health for authorization to evaluate and treat patients without prescription or referral as required in paragraph (h). Such authorization may be granted by the director of health, at his discretion, to an individual occupational therapist, for a specified period of time, and under such limitations and conditions as the director of health deems appropriate.

- (i) “Practice of optometry” means the application of the scientific principles of optometry in the examination of the eye and visual system to detect defects or abnormal conditions; the prescription or use of lenses, prisms, or ocular exercises to correct or alleviate defects or abnormal conditions of the eye or visual system;

the use of approved therapeutic and diagnostic pharmaceutical agents in accordance with the provisions of this paragraph as an aid to the detection and treatment of visual defects or abnormal conditions; and the appropriate referral of patients to licensed physicians for the medical diagnosis and treatment of abnormal conditions.

The director of health shall issue regulations identifying the diagnostic pharmaceutical agents which may be used by optometrists pursuant to this paragraph if the director determines that the use of diagnostic pharmaceutical agents by optometrists are in the best interest of the public.

An individual licensed to practice optometry pursuant to this chapter may use diagnostic pharmaceutical agents only if certified to do so by the board.

Optometrists may use therapeutic pharmaceutical agents in a government hospital only, with prior approval of the hospital’s pharmacy committee, which shall prepare a list of such pharmaceutical agents which may be used by optometrists for both in-patients, and patients treated in the hospital’s outpatient eye-care clinics. It shall be the responsibility of the director of health to give written approval for each optometrist on the staff of the hospital to use and/or prescribe the medications listed by the pharmacy committee. Such use of pharmaceutical agents by optometrists in a non-government hospital will require additional regulation by the board.

Nothing in this paragraph shall be construed as preventing or restricting the practice, services, or activities of a licensed physician or an optician to provide eyeglasses or lenses on the prescription of a licensed physician or optometrist, or a dealer to sell eyeglasses or lenses, provided that the optician or dealer does not represent by title or description of services that he or she is an optometrist.

- (j) “Practice of pharmacy” means the interpretation and evaluation of prescription orders; the compounding, dispensing, and labeling of drugs and devices, and the maintenance of proper records therefor; the responsibility of advising,

where regulated or otherwise necessary, of therapeutic values and content, hazards, and use of drugs and devices; and the offering or performance of those acts, services, operations, and transactions necessary in the conduct, operation, management, and control of a pharmacy.

Within the meaning of this paragraph

- (1) “Pharmacy” means any establishment or institution, or any part thereof, where the practice of pharmacy is conducted; drugs are compounded or dispensed, offered for sale, given away, or displayed for sale at retail; or prescriptions are compounded or dispensed;
- (2) “Prescription” means any order for a drug, medicinal, chemical, or combination or mixtures thereof, or for a medically prescribed medical device, in writing, dated and signed by an authorized health professional, or given orally to a pharmacist by an authorized health professional or the person’s authorized agent and immediately reduced to writing by the pharmacist, specifying the address of the person for whom the drug or device is ordered and directions for use to be placed on the label.

The pharmacist shall have the right to substitute medications approved as “generic equivalents” for any prescribed medication written by a health professional who is an employee of the American Samoa Government in his function as a health professional, provided that such “generic equivalents” be limited only to medications approved by the Pharmacy Committee of the government hospital(s) for such substitution.

- (k) “Practice of physical therapy” means the independent evaluation of human disability, injury, or disease by means of noninvasive tests of neuromuscular functions and other standard procedures of physical therapy, and the treatment of human disability, injury, or disease by therapeutic procedures, embracing the specific scientific application of physical

measures to secure the functional rehabilitation of the human body. These measures include the use of therapeutic exercise, therapeutic massage, heat or cold, air, light, water, electricity, or sound for the purpose of correcting or alleviating any physical or mental disability, or preventing the development of any physical or mental disability, or the performance of noninvasive tests of neuromuscular functions as an aid to the detection or treatment of any human condition. An individual, licensed to practice physical therapy pursuant to this chapter may apply to the director of health for authorization to evaluate and treat patients without prescription or referral as required in paragraph (h). Such authorization may be granted by the director of health, at his discretion to an individual physical therapist, for a specified period of time, and under such limitations and conditions as the director health deems appropriate.

- (l) “Practice by physician assistants” means the performance, in general collaboration with a licensed physician or osteopath, of acts of medical diagnosis and treatment, prescription, preventive health care, and other functions which are authorized by the board pursuant to 31.0404.
- (m) “Practice of practical nursing” means the performance of actions of preventive health care, health maintenance, and the care of persons who are ill, injured, or experiencing alterations in health processes, requiring a knowledge of and skill in nursing procedures gained through successful completion of an approved educational program in practical nursing.
- (n) “Practice of clinical psychology” means the application of established scientific methods and principles, including the principles of psychophysiology, learning, perception, motivation, emotions, organizational and social behaviors for the purpose of understanding, assessing, treating, explaining, predicting, preventing, or influencing behavior; the application of psychological methods and procedures for interviewing, counseling, psychotherapy, including behavior therapy, behavior modification, or hypnotherapy; or the

application of psychological methods or procedures for constructing, administering, or interpreting tests of intelligence, mental abilities and disorders, neuropsychological functioning, aptitudes, interests, attitudes, personality characteristics, emotions, or motivations.

Nothing in this paragraph shall be construed as preventing or restricting the practice, services, or activities of:

- (1) an individual bearing the title of psychologist in the employ of any, academic institution if the services are offered within the confines of the academic institution and if the services do not include psychotherapy; or
 - (2) a school psychologist employed by and working in accordance with regulations of the American Samoa Department of Education.
- (o) “Practice of registered nursing” means the performance of acts requiring substantial specialized knowledge, judgment and skill based upon the principles of the biological, physical, behavioral, and social sciences in:
- (1) the observation, assessment, and recording of physiological and behavioral signs and symptoms of health, disease, and injury, including the performance of examinations and testing and their evaluation for the purpose of differentiating normal and abnormal.
 - (2) the provision of direct and indirect registered nursing services of a therapeutic, preventive, and restorative nature in response to an assessment of the patient’s requirements;
 - (3) the performance of services, counseling, and education for the safety, comfort, personal hygiene, and protection of patients, the prevention of disease and injury, and the promotion of health in individuals, families and communities;
 - (4) the administration of nursing services within a health care facility, including the

delegation of direct nursing functions and the evaluation of the performance of these functions;

- (5) the education and training of persons in the direct nursing care of patients; or
 - (6) the pursuit of nursing research to improve methods of practice.
- (p) “Practice of social work” means rendering or offering to render professional services to individuals, families, or groups of individuals that involve the diagnosis and treatment of psychosocial problems according to social work theory and methods. Depending upon the level at which an individual social worker is licensed under this rule, the professional services may include, but shall not be limited to, the formulation of psychosocial evaluation and assessment, counseling, referral, advocacy, consultation, research, administration, education, and community organization.

Nothing in this paragraph shall be construed to authorize any person licensed as a social worker under this chapter to engage in the practice of medicine.

History: Rule 2-88, eff 27 Mar 88 § 1.

31.0404 Scope of chapter.

- (a) This chapter does not limit the right of an individual to practice a health occupation that he or she is otherwise authorized to practice under this chapter, nor does it limit the right of an individual to practice any other profession that he or she is authorized to practice under the laws of the territory.
- (b) The practices of health occupations regulated by this chapter are not intended to be mutually exclusive.
- (c) Nothing in this chapter shall be construed to require licensure for or to otherwise regulate, restrict, or prohibit individuals from engaging in practices, services, or activities set forth in the paragraphs of this section if the individuals do not hold themselves out, by title, description or services, or otherwise, to be practicing any of the health occupations regulated by this rule.

Nothing in this section shall be construed as exempting any of the following categories from other applicable laws and regulations of the territory.

- (1) Any minister, priest, rabbi, officer, or agent of any religious body or agent of any religious body or any practitioner of any religious belief engaging in prayer or any other religious practice or nursing practice solely in accordance with the religious tenets of any church for the purpose of fostering the physical, mental, or spiritual well-being of any person;
- (2) Any person engaged in the care of a friend or member of the family, including the domestic administration of family remedies, or the care of the sick by domestic servants, housekeepers, companions, or household aides of any type, whether employed regularly or because of an emergency or illness or other volunteers;
- (3) any individual engaged in the lawful practice of audiology, speech pathology, X-ray technology, laboratory technology, or respiratory therapy;
- (4) any individual engaged in the commercial sale or fitting of shoes or foot appliances; or
- (5) marriage and family therapist, marriage counselors, family counselors, child counselors, attorneys, or other professionals working within the legal standards and ethics of their respective professions.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0405 *Persons licensed under prior rules.*

- (a) Except as expressly provided to the contrary in this chapter, any person licensed, registered, or certified by any agency of the territory established or continued by any statute amended, repealed, or superseded by this chapter is considered for all purposes to be licensed, registered or certified by the board for the duration of a term for which the license, registration, or certification are issued under the conditions of this chapter, and may in the future renew that authorization in accordance with the

appropriate renewal provisions of this chapter, except that all licenses previously granted by the board shall be considered as expired unless the current licensee is employed by the American Samoa Government as a health professional in a position consonant with his licensure as a health professional. Such health professional whose license has expired may apply for licensure as appropriate for his education training and position.

- (b) Except as provided to the contrary in this chapter an individual who was originally licensed registered or certified under a previous rule that has been superseded by this chapter continues to meet the education and experience requirements as if that provision had not been deleted.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0406 *Board and committees.*

- (a) The composition, appointment, quorum, term, powers and duties, procedures, and licensing provisions of board are as set forth in Sections 31.1001 et seq. A.S.C.A. This section supplements these.
- (b) The board may appoint committees in medicine, dentistry, nursing and other health professions to:
 - (1) assist in the evaluation of health professionals' credentials when expertise is not available on the board;
 - (2) make licensing recommendations, following a secret ballot, when a potential conflict of interest may exist between any members of the board and a candidate for licensure;
 - (3) make licensing recommendations, following a secret ballot, when a member of the board recommends non-licensure for a candidate of his or her profession; or
 - (4) make recommendation, following a secret ballot, to the board for suspension, revocation, or modification of licenses within their profession.

- (c) where the board and a committee are in disagreement on a particular matter the decision of the board shall prevail.
- (d) The board shall be under the administrative control of the governor.

History: Rule 2-88, eff 27 Mar 88, § 1.

II. LICENSURE OF HEALTH PROFESSIONALS

31.0421 License required.

A license issued pursuant to this chapter is required to practice medicine acupuncture, registered nursing, practical nursing, dentistry, dental, therapy, dental hygiene, dietetics, nutrition, occupational therapy, optometry, pharmacy, physical therapy, podiatry, psychology, and social work or to practice as, a physician assistant and as a nurse practitioner in the territory, except as provided in this chapter. Additional certification issued pursuant to this chapter is required to practice advanced registered nursing.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0422 Exemptions.

The provisions of this chapter prohibiting the practice of a health occupation without a license shall not apply:

- (1) to an individual who administers treatment or provides advice in any case of emergency
- (2) to an individual employed in the territory by the U.S. Federal Government, while he or she is acting in the official discharge of the duties of employment,
- (3) to an individual, licensed to practice a health occupation in a state, territory or country who is called in professional consultation by a health professional licensed in American Samoa by or on behalf of a specific patient, to visit, examine, treat, or advise the specific patient in the territory, or to give a demonstration or clinic in the territory, provided that the individual engaged in the consultation, demonstration, or clinic in performs in affiliation with a comparable health professional licensed pursuant to this rule.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0423 General qualifications of applicants.

- (a) An individual applying for a license under this rule shall establish to the satisfaction of the board that the individual:
 - (1) has not been convicted of an offense which bears directly on the fitness of the individual to be licensed;
 - (2) is at least 18 years of age;
 - (3) has successfully completed the additional requirements set forth in 31.0424, 31.0441 through 31.0447 and 31.0451 through 31.0454 as applicable;
 - (4) meets any other requirements established by the board by rule to assure that the applicant has had the proper education, training, experience, and qualifications to practice the health occupation.
- (b) the board may deny a license to an applicant whose license to practice a health occupation was revoked or suspended in another state, territory or other licensing jurisdiction if the basis of the license revocation or suspension would have caused a similar result in American Samoa, or if the applicant is the subject of ending disciplinary action regarding his or her right to practice in another jurisdiction.
- (c) the references in 31.0424, 31.0441 through 31.0447 and 31.0451 through 31.0454 to named professional organizations and governmental entities for purposes of accreditation or the administration of national examinations shall be considered to refer to successor organizations or entities upon a determination by the board that the successor is substantially equivalent in standards and purposes as the organization or entity named in this chapter.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0424 Additional qualifications.

- (a) an individual applying for a license to practice medicine or dentistry under this chapter shall establish to the satisfaction of the board that the individual is a graduate of an accredited school of medicine or dentistry, and has completed at

least one year of post-graduate training in a hospital or other health care or dental facility accredited for post-graduate training. Graduates from an accredited school of medicine or dentistry located in the United States, Canada, Papua New Guinea, Australia, New Zealand, Great Britain, Switzerland, France, Belgium, West Germany, Norway, Sweden, or Denmark will be considered as having met standards of education acceptable for licensure in American Samoa. Graduates-of Fiji schools of medicine or dentistry, or of any other health profession listed in this chapter who have graduated prior to January 1, 1987, will also be considered as having met standards of education acceptable for licensure in American Samoa.

- (b) individuals applying for a license to practice medicine under this chapter who have completed medical education under conditions other than those listed in subsection 31.0424(a) shall establish to the satisfaction of the board that they have successfully passed the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) and the ECFMG English Test.
- (c) individuals applying for a license to practice dentistry under this chapter who have completed their dental education under conditions other than those listed in subsection 31.0424(a) shall establish to the satisfaction of the board that they have obtained equivalent education and training as those who received their education and training in the countries listed in subsection 31.0424(a) by submitting evidence of licensure, or eligibility for licensure in any state of the United States.
- (d) an individual applying for a license to practice acupuncture under this rule shall establish to the satisfaction of the board that the individual:
 - (1) if he or she is a licensed physician under subsection 31.0424(a), has successfully completed at least 100 hours of instruction in the practice of acupuncture at a school or college accredited by the U.S. National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine, or other training approved by the board; or has training which would qualify the applicant for licensure to practice acupuncture in any of the countries listed in subsection 31.0424(a);
 - (2) if he or she is not a Licensed physician, the applicant shall furnish the board with evidence of completion of an educational program in the practice of acupuncture of at least 3 academic years at the post-baccalaureate level, at a school of acupuncture accredited by the U.S. National Commission for Schools and Colleges for Acupuncture and Oriental Medicine; or has training which would qualify the applicant for licensure to practice acupuncture under the conditions listed in subsection 31.0424(a).
- (e) an individual applying for a license to practice dental hygiene under this rule shall provide the board with evidence of eligibility for licensure as a dental hygienist under the conditions listed in subsection 31.0424(a).
- (f) an individual applying for a license to practice dental therapy under this chapter shall provide the board with evidence of eligibility for licensure as a dental therapist under the conditions listed in subsection 31.0424(a).
- (g) an individual applying for a license to practice occupational therapy under this chapter shall provide the board with evidence of eligibility for licensure to practice occupational therapy in any of the countries listed in subsection 31.0424(a) and further, the applicant shall be required to furnish proof of having satisfactorily completed a minimum of six months of post-graduate work experience in a clinical setting of an accredited occupational therapy training institution.
- (h) an individual applying for a license to practice optometry under this chapter shall provide the board with evidence of eligibility for licensure to practice optometry under the conditions listed in subsection 31.0424(a).
- (i) an individual applying for a license to practice pharmacy under this chapter shall provide the board with evidence of eligibility for licensure to practice pharmacy under the conditions listed in subsection 31.0424(a).

(j) an individual applying for a license to practice physical therapy under this chapter shall provide the board with evidence of eligibility for licensure as a physical therapist under the conditions listed in subsection 31.0424(a), and further, the applicant shall furnish the board with evidence that he has satisfactorily completed a minimum of six months of supervised work experience in a clinical setting of an accredited physical therapy training institution.

(k) an individual applying for a license to practice as a physician assistant or nurse practitioner under this chapter shall provide the board with evidence of eligibility for licensure as a physician assistant or nurse-practitioner under the conditions listed in subsection 31.0424(a); or alternatively, provide the board with evidence that the applicant has completed educational requirements consistent with licensure as a physician assistant or nurse-practitioner; further, that such educational requirements for licensure as a physician assistant be in accordance with standards established by the U.S. National Commission on Certification of Physician Assistants; further that such applicant furnish the board with evidence of compliance with Continuing Medical Education activities as mandated by the NCCPA.

(1) an individual applying for a license to practice practical nursing under this chapter shall establish to the satisfaction of the board that the individual has successfully completed a postsecondary level educational program in practical nursing which is approved by the Board.

(m) an individual applying for a license to practice registered nursing under this rule shall establish to the satisfaction of the board that the individual has successfully completed an educational program in registered nursing approved by the board or by a state board of nursing with standards substantially equivalent to the standards of the territory.

(n) an individual applying for a license to practice clinical psychology under this rule shall establish to the satisfaction of the board that the individual has:

- (1) earned a doctoral degree in psychology from an accredited college or university; and
- (2) completed at least 2 years of postdoctoral experience acceptable to the board.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0425 Application for license.

An applicant for a license shall submit an application to the board on the form required the board.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0426 Issuance of license.

The board shall issue a license to an applicant who meets the requirements of this chapter to practice the health occupation regulated by the board.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0427 Scope of license.

(a) a person licensed under this chapter to practice a health occupation is authorized to practice that occupation in the territory while the license is effective, within the limitations imposed by the board at the time the license is issued; provided that:

- (1) a person certified to practice advanced registered nursing is authorized to practice the specialty for which he or she has been certified by the board.

(b) an individual who fails to renew a license to practice a health occupation shall be considered to be unlicensed and subject to the penalties set forth in this rule and other applicable laws of the territory, if he or she continues to practice the health occupation.

(c) the board may issue licenses in four categories:

- (1) active license: to be issued to a health professional who is or intends within a short period of time, to be in the active practice of his health profession.
- (2) inactive license: to be issued to a health professional who is qualified to be in the active practice of his health profession, but who is unable to pursue his profession in American Samoa at the time of his

application. Such licensure will apply but will not be limited to health professionals in the Armed Forces, those residing temporarily outside of American Samoa, individuals temporarily inactive due to personal factors, such as motherhood or election to government position outside the health field. Such licensure shall not exceed a period of 5 years. Granting of an inactive license recognizes an individual's qualifications for licensure, but does not permit active practice of a health profession in the territory of American Samoa. Such return to active practice will require notification of the board by the licensee, and a request for alteration of the licensure to "active". At the time of such reapplication it shall be the responsibility of the board to review the applicant's qualifications and grant or deny licensure. It shall be the prerogative of the board to request additional information as to the applicant's qualifications and status.

- (3) limited license: the board shall have the right to limit the active practice of any health professional seeking licensure in the territory.

Such limitations may include but not be limited to: duration of licensure, permission or proscription of any or multiple professional activities, limitations as to types of medications or treatments which may be undertaken, either for a specific time period or an unlimited duration of time; requiring of a health professional that his practice be carried out under supervision, with specifications as to type, intensity, duration of such supervision, together with specifications as to the nature of reports to be made to the board. about the results of the supervision by the named supervisor. The board shall have the right to revoke or terminate licensure of a health professional granted a limited license if the terms of the license are violated by the licensee.

- (4) honorary license: may be issued to a health professional who has retired or is retiring from active practice after a minimum of 30 years of active practice, in recognition of service to the community. Such licensee shall not engage in active practice. The duration of a honorary license may be indefinite.

History: Rule 2-88. eff 27 Mar 88. § 1.

31.0428 Term and renewal of licenses.

- (a) an active license expires 2 years from the date of its first issuance or renewal unless renewed by then board as provided in this section.
- (b) the board may establish continuing education requirements as a condition for renewal of licenses under this section.
- (c) at least 30 days before the license expires, or greater period as established by regulation, the board or its agent shall send to the licensee a renewal notice that states:
 - (1) the date on which the current license expires; and
 - (2) the date by which the renewal application must be received by the board for renewal to be issued and mailed before the license expires.
- (d) before the license expires, the licensee may renew it for an additional term, if the licensee:
 - (1) submits a timely application to the board;
 - (2) is otherwise entitled to be licensed; and
 - (3) submits to the board satisfactory evidence of compliance with any continuing education requirements established by the board for license renewal.
- (e) the board shall renew the license of each licensee who meets the requirements of this section.

History: Rule 2-88, eff 27 Mar 88. § 1.

31.0429 Reinstatement of expired licenses.

When a health professional fails for any reason to renew the license issued under this section, the board may reinstate the license if the health professional:

- (1) applies to the board for reinstatement of the license within a 5 year period after the expiration of the license;
- (2) complies with current requirements for renewal of a license as set forth in this section: and
- (3) submits to the board satisfactory evidence of compliance with the qualifications and requirements established under this section for license reinstatements.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0430 Revocation, suspension, or denial of license; civil penalty; reprimand.

- (a) see Sections 31.1006, 31.1009, 31.1010, and 31.1011, A.S.C.A.
- (b) if the board determines, after investigation, that the conduct of a licensee presents an imminent danger to the health and safety of the residents of the territory, the board may summarily suspend or restrict, without a hearing, the license to practice a health occupation.
- (c) the board, at the time of the summary suspension or restriction of a license, shall provide the licensee with written notice stating the action that is being taken, the basis for the action, and the right of the licensee to request a hearing.
- (d) a licensee shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of license. The board shall hold a hearing within 72 hours of receipt of a timely request, and shall issue a decision within 72 hours after the hearing.
- (e) every decision and order adverse to a licensee shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings shall be supported by, and in accordance with, reliable, probative, and substantial evidence. The board shall provide a copy of the decision and order and accompanying findings of fact and conclusions of law to each party to a case or to his or her attorney of record.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0431 Voluntary surrender of license.

- (a) any health professional who is the subject of an investigation into, or a pending proceeding involving, allegations involving misconduct may voluntarily surrender his or her license to practice in the territory, but only by delivering to the board an affidavit stating that the health professional desires to surrender the license and that the action is freely and voluntarily taken, and not the result of duress or coercion.
- (b) upon receipt of the required affidavit, the board shall enter an order revoking or suspending the license of the health professional or the privilege to practice.
- (c) the voluntary surrender of a license shall not preclude the imposition of civil or criminal penalties against the licensee.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0432 Voluntary limitation or surrender of license by impaired health professional.

- (a) any license issued under this rule may be voluntarily limited by the licensee. During the period of time that the license has been limited, the licensee shall not engage in the practices or activities to which the voluntary limitation of practice relates. As a condition for accepting the voluntary limitation of practice, the board may require the licensee to do one or more of the following:
 - (1) accept care, counseling, or treatment by physicians or other health professionals acceptable to the board;
 - (2) participate in a program of education prescribed by the board; and
 - (3) practice under the direction of a health professional acceptable to the board for a specified period of time.
- (b) any license issued under this rule may be voluntarily surrendered to the board by the licensee. During the period of time that the license has been surrendered, the individual surrendering the license shall not practice, attempt to practice, or offer to practice the health

occupation for which the license is required, and shall be considered unlicensed.

- (c) all records, communications, and proceeding: of the board related to the voluntary limitation or surrender of a license under this section shall be confidential.

History: Rule 2-88, eff 27 Mar 88. § 1.

III. ADVANCED REGISTERED NURSING-SCOPE OF PRACTICE-COLLABORATION

31.0441 General authorization.

The advanced registered nurse may perform actions of medical diagnosis, treatment, prescription, and other functions authorized by this section in collaboration with a physician, osteopath, or dentist, who shall be responsible for the overall medical direction of the health care team. Collaboration shall be at the level required by this chapter, or at a higher level.

History: Rule 2-88, eff 27 Mar 88. § 1.

31.0442 Collaboration.

- (1) Generally, nurse-midwives and nurse-practitioners shall carry out acts of advanced registered nursing in general collaboration with a physician or osteopath.
- (2) Generally; nurse-anesthetists shall carry out acts of advanced registered nursing in direct collaboration with an anesthesiologist, other physician, or dentist.
- (3) In accordance with this section: in collaborations between physicians, osteopaths, and dentists, and advanced registered nurses, the collaborating parties may establish by protocol higher levels of collaboration for specific acts or specific circumstances.

History: Rule 2-88. eff 27 Mar 88, § 1.

31.0443 Authorized acts.

Within the established protocol, an advanced registered nurse may:

- (1) monitor and alter drug therapies;

- (2) initiate appropriate therapies for certain conditions;
- (3) make referrals for physical therapy; and
- (4) perform additional functions within his or her specialty determined in accordance with 31.0444, 31.0445 and 31.0446.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0444 Nurse-anesthetist.

- (a) in addition to the general functions specified in 31.0443, a nurse-anesthetist may perform any or all of the actions in subsection (b) of this section.
- (b) the nurse-anesthetist may:
 - (1) determine the health status of the patient as it relates to the relative risks associated with the anesthetic management of the patient through the performance of the operative procedures;
 - (2) based on history, physical assessment, and supplemental laboratory results, determine, with the consent of the collaborating anesthesiologist, or other physician, or dentist, the appropriate type of anesthesia;
 - (3) order preanesthetic medication;
 - (4) perform procedures commonly used to render the patient insensible to pain during the performance of surgical, obstetrical, therapeutic, or diagnostic clinical procedures. This shall include ordering and administering:
 - (A) general and regional, including spinal, anesthesia;
 - (B) inhalation agents and techniques; and
 - (C) intravenous agents and techniques and a nurse-anesthetist collaborating with a dentist shall be limited to ordering and administering anesthesia appropriate for dental procedures;
 - (5) order or perform monitoring procedures indicated as pertinent to the anesthetic health care management of the patient;

- (6) support life functions during anesthesia health care, including induction and incubation procedures, the use of appropriate mechanical supportive devices, and the management of fluid, electrolyte, and blood component balances;
 - (7) recognize and take appropriate corrective action for abnormal patient responses to anesthesia, adjunctive medication, or other forms of therapy;
 - (8) recognize and treat a cardiac arrhythmia while the patient is under anesthetic care;
 - (9) participate in management of the patient while in the postanesthesia recovery area, including ordering the administration of fluids and drugs; and
 - (10) place peripheral and central venous and arterial lines for blood sampling and monitoring as appropriate.
- (c) notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, a qualified advanced registered nurse without collaborating with an anesthesiologist, other physician, or dentist, may initiate and perform local anesthetic procedures and order necessary anesthetic agents to perform the procedures.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0445 Nurse-midwifery.

- (a) in addition to the general functions specified in 31.0443 the nurse-midwife may perform any of the acts in subsection (b) of this section, provided that:
- (1) the nurse-midwife and the obstetrician-gynecologist have set forth in a protocol procedures for:
 - (A) consultation with each other about patient conditions during the antepartum, intrapartum, and postpartum phases of maternity care, and during gynecological care, including consultations for the purpose of ensuring that the medical care provided by the nurse-midwife is for the normal obstetrical or ecological patient

as required by paragraph (B)(2) of this section;

- (B) emergency care to protect the health of the mother and infant.
 - (2) the patient has been advised and informed of the responsibilities of the obstetriciangynecologist and the nurse-midwife; and
 - (3) the act is done in accordance with subsection (b) of this section.
- (b) the nurse-midwife may:
 - (1) manage the medical care of the normal obstetrical patient;
 - (2) perform superficial minor surgical procedures;
 - (3) manage the normal obstetrical patient during labor and delivery to include amniotomy, episiotomy, and repair;
 - (4) initiate and perform local anesthetic procedures and order the necessary anesthetic agents to perform the procedures;
 - (5) perform postpartum examination;
 - (6) provide gynecological cares for the essentially normal woman;
 - (7) prescribe appropriate medications; and
 - (8) provide family planning services.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0446 Nurse-practitioner practice.

In addition to the general functions specified in 31.0443, the nurse-practitioner may perform any or all of the following acts provided that the act is done in accordance with 31.0442:

- (1) manage selected medical problems;
- (2) initiate, monitor, or alter therapies for certain uncomplicated, acute illnesses;
- (3) initiate appropriate treatments and medications, and alter dosage; and

- (4) monitor and manage patients with stable, chronic diseases.

History: Rule 2-88, eff 27 Mar 88, § 1.

31.0447 Nurse-anesthetist.

- (a) in addition to the general qualifications for licensure set forth in 31.042 3 of this chapter, and any additional requirements which the board may establish by rule, a nurse-anesthetist shall:

- (1) be a registered nurse holding a current, valid license pursuant to 31.0421 of this chapter, and be in good standing with the board, with no action pending or in effect against the license which could adversely affect the legal right to practice;
- (2) be in good ethical standing within the profession;
- (3) be a graduate of a nurse-anesthetist: educational program or school accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools of the American Association of Nurse Anesthetists, and have met all the criteria and requirements in theory and clinical practice to apply for certification; and
- (4) successfully complete the comprehensive, certifying examination administered by the Council of Certification of Nurse Anesthetists of the American Association of Nurse Anesthetists, demonstrating basic scientific knowledge of and competent judgment in-nurseanesthesia practice.

- (b) an applicant for licensure as a nurse-anesthetist from a jurisdiction other than an agency of the federal government of the United States or its states shall demonstrate to the satisfaction of the board that he has completed training and successfully passed examination equivalent to that described in paragraphs (a) (3) and (a)(4) of this section.

History: Rule 2-88, eff 27 Mar 88, § 1.

IV. PROHIBITED ACTS

31.0451 Practicing without license.

No person shall practice, attempt to practice, or offer to practice a health occupation licensed or regulated under this chapter territory unless currently licensed, or exempted from licensing, under this chapter.

History: Rule 2-88. eff 27 Mar 88. § 1.

31.0452 Misrepresentation.

Unless authorized to practice a health occupation under this chapter, a person shall not represent to the public by title, description of services, methods, or procedures, or otherwise that the person is authorized to practice the health occupation in the territory.

History: Rule 2-88. eff 27 Mar 88. § 1.

31.0453 Filing false document or evidence-False statements.

- (a) no person shall file or attempt to file with the board any statement diploma, certificate, credential, or other evidence of achievement in a health profession if the person knows, or should know, that it is false or misleading.
- (b) no person shall knowingly make a false statement that is in fact material under oath or affirmation administered by the board or hearing officer.

History: Rule 2-88, eff 27 Mar 88. § 1.

31.0454 Fraudulent sale, obtaining or furnishing of documents.

- (a) no person shall sell or fraudulently obtain or furnish any diploma, license, certificate or registration, record, or other document required by this chapter or by the board.

History: Rule 2-88, eff 27 Mar 88. § 1.

31.0455 Violation-Penalty.

- (a) violation of any provision of this chapter is a class A misdemeanor.

History: Rule 2-88. eff 27 Mar 88. § 1.

31.0456 Violation-Single act sufficient evidence.

- (a) in any prosecution under 31.0455, or any decision made by the board relative to licensing, it shall be sufficient to sustain such conviction or decision to show a single violative act of

conduct, and it shall not be necessary to show a general course of such conduct.

History: Rule 2-88. eff 27 Mar 88. § 1.

TITLE 31 – CHAPTER 05 – TERRITORIAL BOARD OF PUBLIC ACCOUNTANCY RULES FOR CERTIFIED PUBLIC ACCOUNTANTS & PUBLIC ACCOUNTANTS

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I. GENERAL PROVISIONS

31.0501 Objective.

This chapter has been adopted by the territorial board of public accountancy, hereafter referred to as “board”, and is intended to clarify Chapter 2. Section

31, American Samoa Code (annotated), and to implement the administration thereof to the end that Chapter 31.02, A.S.C.A., may be best effectuated and the public interest most effectively served.

History: Rule 3-88, eff 18 Apr 88.

31.0502 Biennial renewal of certificate of registration.

The certificate or registration of each certified public accountant and each registered public accountant shall be renewed biennially by paying the renewal fee on or before December 31 of each odd-numbered year.

History: Rule 3-88, eff 18 Apr 88.

31.0503 Notification and filing of names and addresses and changes.

The current mailing address of each certified public accountant, public accountant, and permit holder shall be registered with the board.

The board shall be immediately notified in writing, of all changes.

History: Rule 3-88, eff 18 Apr 88.

31.0504 Evidence of authority to practice.

Each permit holder shall at all times display evidence of the authority to practice, together with the certificate or registration and other evidence of current validation, in the permit holder's place of business.

History: Rule 3-88, eff 18 Apr 88.

II. DEFINITIONS

31.0505 Public accounting practice.

(a) The term, "public accounting practice", also referred to as "public practice", as used in Chapter 31.02 ASCA and in this chapter means the performing for a client, or a fee basis, one or more types of services rendered by public accountants and the holding out to the public to be a certified public accountant, licensed under 31.0210 A.S.C.A., or a public accountant, licensed under 31.0217 A.S.C.A., as:

- (1) A sole practitioner; or

- (2) A partner in a partnership of certified public accountant or public accountants or a combination of both; or

- (3) A principal in a professional accounting corporation.

(b) the term shall also include a certified public accountant or public accountant employed as a staff employee of the sole practitioner, partnership or professional accounting corporation described in subsection (a).

History: Rule 3-88, eff 18 Apr 88.

31.0506 Not in a public accounting practice.

(a) Any certified public accountant, licensed under 31.0210 A.S.C.A., or any public accountant licensed under 31.0217 A.S.C.A., shall be considered not to be in public practice if the person does not obtain a permit to practice under 31.0219 A.S.C.A. This group shall include:

- (1) Any certified public accountant or public accountant who is retired from active participation as a sole practitioner or as a partner in a partnership or as a principal in a professional accounting corporation, but who is receiving retirement compensation for past services; and

- (2) Any certified public accountant or public accountant who is gainfully employed solely in a capacity or capacities other than that described in subsection 31.0505 ASAC.

(b) Any certified public accountant or public accountant not in public practice as defined in this section shall clearly indicate in any display or utterance that one does not hold oneself out by adding to one's "CPA" or "PA" designation the words as "not in public practice".

History: Rule 3-88, eff 18 Apr 88.

31.0507 Incidental to his practice in such other state or country.

(a) The meaning of the phrase "incidental to his practice in such other state or country" is to be reviewed annually by the board at its regular April meeting until the meaning in 31.0507(b) ASAC is adopted.

- (b) The phrase “incidental to his practice in such other state or country” used in 31.0219(b)(1) (D) A.S.C.A., shall mean services rendered in this territory by a non-licensee for work performed for a client outside the territory such as the audit of an American Samoa subsidiary of an out-of-state parent corporation, or an audit of an American Samoa branch or division of an out-of-state partnership, joint venture, or individual proprietorship.

History: Rule 3-88, eff 18 Apr 88.

III. CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANT

31.0508 Issuance.

A person shall be entitled to the issuance of a certificate of certified public accountant upon application to the board and upon the satisfactory fulfillment of the requirements set forth in 31.0210 A.S.C.A.

History: Rule 3-88, eff 18 Apr 88.

31.0509 Application for certificate.

After satisfactorily fulfilling the requirements of 31.0210 A.S.C.A., an application for a certificate of certified public accountant shall be filed not later than 45 days prior to the regular April or October meeting of the board, and shall be accompanied by a fee as provided by the board in accordance with 31.0220(b)(1) A.S.C.A.

History: Rule 3-88, eff 18 Apr 88.

31.0510 Competence, trustworthiness, and fairness (references).

- (a) Each applicant for a certificate of a certified public accountant shall submit 3 letters of reference, from persons not related to the applicant, attesting to the applicant’s competence, trustworthiness, and fairness.
- (b) Each applicant shall also authorize the Board to contact agencies of the American Samoa government and other organizations for information regarding the applicant’s competence, trustworthiness, and fairness.

History: Rule 3-88, eff 18 Apr 88.

31.0511 Education.

- (a) An applicant for a certificate of certified public accountant shall:
- (1) Present satisfactory evidence that the applicant has received a baccalaureate degree which shall have included a minimum of 12 semester hours of upper division, or graduate level accounting and auditing subjects from a university, college, or other 4 year institution of learning accredited by a regional or national accrediting agency or association included in a list of those agencies or associations published

History: Rule 3-88, eff 18 Apr 88

31.0507 Incidental to his practice in such other state or country.

- (a) The meaning of the phrase “incidental to his practice in such other state or country” is to be reviewed annually by the board at its regular April meeting until the meaning in 31.0507(b) ASAC is adopted.
- (b) The phrase “incidental to his practice in such other state or country” used in 31.0219(b)(1) (D) A.S.C.A., shall mean services rendered in this territory by a non-licensee for work performed for a client outside the territory such as the audit of an American Samoa subsidiary of an out-of-state parent corporation, or an audit of an American Samoa branch or division of an out-of-state partnership, joint venture, or individual proprietorship.

History: Rule 3-88, eff 18 Apr 88.

III. CERTIFICATE OF CERTIFIED PUBLIC ACCOUNTANT

31.0508 Issuance.

A person shall be entitled to the issuance of a certificate of certified public accountant upon application to the board and upon the satisfactory fulfillment of the requirements set forth in 31.0210 A.S.C.A.

History: Rule 3-88, eff 18 Apr 88.

31.0509 Application for certificate.

After satisfactorily fulfilling the requirements of 31.0210 A.S.C.A., an application for a certificate of certified public accountant shall be filed not later than 45 days prior to the regular April or October meeting of the board, and shall be accompanied by a fee as provided by the board in accordance with 31.0220(b)(1) A.S.C.A.

History: Rule 3-88, eff 18 Apr 88.

31.0510 Competence, trustworthiness, and fairness (references).

- (a) Each applicant for a certificate of a certified public accountant shall submit 3 letters of reference, from persons not related to the applicant, attesting to the applicant's competence, trustworthiness, and fairness.
- (b) Each applicant shall also authorize the Board to contact agencies of the American Samoa government and other organizations for information regarding the applicant's competence, trustworthiness, and fairness.

History: Rule 3-88, eff 18 Apr 88.

31.0511 Education.

- (a) An applicant for a certificate of certified public accountant shall:
 - (1) Present satisfactory evidence that the applicant has received a baccalaureate degree which shall have included a minimum of 12 semester hours of upper division, or graduate level accounting and auditing subjects from a university, college, or other 4 year institution of learning accredited by a regional or national accrediting agency or association included in a list of those agencies or associations published by the Secretary of Education under the requirements of 38 United States Code 1775, as amended; or
 - (2) Present satisfactory evidence that the applicant has received a baccalaureate or comparable degree which shall have included a minimum of 12 semester hours of upper division, or graduate level accounting and auditing subjects from a foreign or U.S. university, college, or other

4 year institution and, in addition, provide evidence that the baccalaureate or comparable degree qualifies the applicant for acceptance for an advanced degree at an accredited university, college, or other 4 year institution as specified in paragraph (1).

- (b) An applicant for a certificate of certified public accountant after the date set by 31.0211(2) A.S.C.A., in addition to meeting the requirements in subsection (a), shall present evidence of satisfactory completion of at least 30 semester hours of upper division or graduate level study comprising of such subjects as:
 - (1) Accounting and auditing,
 - (2) Taxation;
 - (3) Management services;
 - (4) Computer science;
 - (5) Economics;
 - (6) Business law;
 - (7) Functional fields of business (finance, production, marketing, personnel relations, business organization, and business management); and
 - (8) Other business-related subjects as approved by board, at an accredited university, college, or 4-year institution as specified in subsection (a).

The baccalaureate degree and the 30 semester hours of additional study shall have included a minimum of 18 semester hours of upper division or graduate level accounting and auditing subjects. The 30 semester hours of additional study shall not be counted towards the baccalaureate degree. In the event the additional studies of 30 semester hours are completed before the baccalaureate degree is conferred, the applicant shall furnish the board a letter from the university, college, or 4-year institution certifying that the additional studies were completed after the applicant

was eligible to attain the baccalaureate degree.

- (c) The board shall accept the certified transcripts as evidence of satisfactory completion of the educational requirements.
- (d) An applicant requesting exemption from educational requirements pursuant to 31.0212 A.S.C.A., shall arrange to provide direct confirmation to the board, from an appropriate source, that the applicant meets the requirements stated therein.

History: Rule 3-88, eff 18 Apr 88.

31.0512 Examination.

The examination prescribed in 31.0213 ASCA shall consist of the following:

- (1) American Institute of Certified Public Accountants (AICPA) examination; and
- (2) Open-book examination. (American Institute of Certified Public Accountants (AICPA) continuing professional education course “Professional Ethics for CPAs”.)

History: Rule 3-88, eff 18 Apr 88.

31.0513 AICPA examination.

- (a) The board shall use the examination prescribed by the AICPA.
- (b) The examination may be taken in the State of Hawaii or at any other authorized testing center. The board will provide appropriate letters requesting that the applicant be allowed to take the examination at that location. As the board prefers to offer the examination in American Samoa, efforts will be continued to establish an authorized - testing center within the territory.
- (c) The board will require direct confirmation of an applicant’s examination grades performance of audits involving the application of generally accepted accounting principles and generally accepted auditing standards; or
- (2) Complete 2 years of professional experience in public accounting practice.
- (b) The board shall require all experience to have been of a full-time nature, measured in terms of

weeks, and shall require a statement signed, under oath, by a present or former employer in the practice of public accountancy. Full-time employment shall constitute at least 35 hours a week.

History: Rule 3-88, eff 18 Apr 88.

IV. CERTIFICATE OF PUBLIC ACCOUNTANT

31.0516 Issuance.

A person shall be entitled to the issuance of a certificate of public accountant upon application to the board and upon the satisfactory fulfillment of the requirements set forth in 31.0217 A.S.C.A.

History: Rule 3-88, eff 18 Apr 88.

31.0517 Application for certificate.

After satisfactorily fulfilling the requirements of 31.0217 A.S.C.A., an application for a certificate of public accountant shall be filed not later than 45 days prior to the regular April or October meeting of the board, and shall be accompanied by a fee as provided by the board in accordance with 31.0220(b)(1) A.S.C.A.

History: Rule 3-88, eff 18 Apr 88.

31.0518 Competence, trustworthiness, and fairness (references).

- (a) Each applicant for a certificate of public accountant shall submit 3 letters of references, from persons not related to the applicant, attesting to the applicant’s competence, trustworthiness, and fairness.
- (b) Each applicant shall also authorize the Board to contact agencies of the American Samoa Government and other organizations for information regarding the applicant’s competence, trustworthiness, and fairness.

History: Rule 3-88, eff 18 Apr 88.

31.0519 Examination

The examination for a Certificate of Public Accountant shall consist of the following:

- (1) National Society of Public Accountants (NSPA) Public Accountants Examination; and

- (2) Open-book examination. (American Institute of Certified Public Accountants (AICPA) continuing professional education course “Professional Ethics for CPAs”.)

History: Rule 3-88, eff 18 Apr 88.

31.0520 NSPA examination.

- (a) The board shall use the examination prescribed by the NSPA, and shall make all necessary arrangements with the society including the grading of the examination papers. The society’s grading of examination papers shall be subject to the review and approval of the board.

- (b) Applications for the examination shall be:

- (1) Filed by February 15, immediately preceding the May examination and by August 15, preceding the November examination; and
- (2) Accompanied by the examination fee as provided by the board, which shall not be refundable. An application shall not be considered filed until all required documents have been received by the board.

- (c) A candidate who, subsequent to filing an application, wishes to postpone taking the examination, shall notify the board in writing at least 30 days prior to the date of the examination, and the fee paid with the application shall be applied to the next succeeding examination. Only one postponement will be allowed.

Failure to notify the board in writing within the prescribed time, or otherwise failing to obtain a postponement from the board shall cause the examination fee to be forfeited. For good cause shown, the board may waive the 30-day written notice and the postponement limitation.

- (d) The examination for the certificate of public accountant shall be held in the territory at places designated by the board.

- (e) The board may apply security measures which are deemed necessary to confirm the identification of the candidates for examination.

- (f) A candidate shall attain a grade of at least 75 in each of the parts of the examination in order to satisfactorily complete the entire examination.

- (g) Conditional credits shall be allowed at the first examination in which the candidate obtains a grade of 75 or more in 2 parts or practice alone and a grade of at least 50 on all parts not passed. This minimum grade requirement shall be waived if 3 parts are passed at a single sitting. To add to this conditional status the candidate shall obtain a grade of 75 or more in at least one part and a grade of at least 50 in all parts not passed. While a grade of less than 50 prevents the candidate from adding to the candidate’s conditional status, it alone does not remove or cancel a conditional status previously attained. A conditional status shall expire at the end of the sixth succeeding examination offered from that examination which first placed the candidate on conditional status.

- (h) The board shall accept conditional credits for any part or parts of the NSPA examination earned by the candidate and given under the authority of another state; provided, that the candidate had received the grade of at least 75 in each part. However, recognition of conditional credits shall be subject to the limitation set forth in subsection (g).

- (i) The board shall waive the examination for a certificate of public accountant, provided that:

- (1) With respect to the holder of a valid certificate of PA issued under the laws of another state, the board shall obtain direct confirmation from an appropriate source that the certificate upon which an application for exemption is based is currently valid and unrevoked and was issued on the basis of an examination described at 31.0520(a) ASAC; and

- (2) With respect to a holder of a certificate, license, or degree issued by a foreign country, the applicant shall furnish evidence, from a state of the United States, substantiating that the certificate, license, or degree is comparable to a certificate of public accountant of that state and was

issued on the basis of an examination described at 31.0520(a) ASAC.

History: Rule 3-88, eff 18 Apr 88.

31.0521 Open-book examination.

Each applicant for a certificate of public accountant who has attained a passing score in all parts of the NSPA examination and each applicant who qualified for an exemption from the examination requirements under 31.0520(i) ASAC shall be required to take the AICPA CPE course “Professional Ethics for CPAs” as an open-book examination and receive continuing education credit. The examinations, which shall be administered by the board and at the applicant’s cost, shall be completed in the applicant’s own handwriting and may be retaken until continuing education credit is received.

History: Rule 3-88, eff 18 Apr 88.

31.0522 Experience.

- (a) The board shall require a person applying for a certificate of public accountant to:
 - (1) Complete 2 years of public accounting experience with a CPA or PA; or
 - (2) Complete 5 years of accounting in industry, government or college teaching.
- (b) The board shall require that all experience to have been of a full-time nature, measured in terms of weeks, and shall require a statement signed, under oath, by a present or former employer. Full-time employment shall constitute at least 35 hours a week.

History: Rule 3-88, eff 18 Apr 88.

V. PERMIT TO PRACTICE

31.0523 Requirements.

For a permit to practice public accountancy in any calendar year, a certified public accountant or public accountant, licensed under section 31.02 A.S.C.A., shall file an application which, after December 31, 1988, shall include a certificate of continuing education as specified under Subchapter 6 of these rules.

History: Rule 38, eff 18 Apr 88.

31.0524 Control and reporting.

- (a) For the purpose of this section, a permit shall be obtained whether or not the public accounting practice is:
 - (1) One of continuation from the prior year;
 - (2) One to be entered into for the first time; or
 - (3) One to be resumed after causing to lapse the permit to practice of the prior year or prior years.
- (b) For a 1987 permit, an applicant shall file an application prior to the commencement date of the applicant’s public practice. For a permit to practice public accountancy for the year 1988 and each biennium thereafter, the applicant shall file an application, on a form prescribed by the board, at least 30 days prior to the date on which the permit shall become effective;

History: Rule 3-88, eff 18 Apr 88.

31.0525 Temporary permit to practice.

An application for a temporary permit to practice, pursuant to 31.0219(b) A.S.C.A., shall be filed on a form prescribed by the board not later than 60 days prior to the commencement of the period covered by the application and shall be accompanied by a statement signed by an official of the jurisdiction which issued the certificate or registration, attesting that the same is currently valid, and not revoked. The board may waive the filing deadline requirement for good cause.

History: Rule 3-88, eff 18 Apr 88.

VI. CONTINUING EDUCATION

31.0526 Basic concept.

The overriding consideration in determining whether or not a specific program qualifies as acceptable continuing education is whether the program is a formal program of learning which will contribute directly to the professional competence of a licensee in public practice. Each licensee shall determine the course of study to be pursued by the licensee within the guidelines established by this chapter.

History: Rule 3-88, eff 18 Apr 88.

31.0527 Persons covered.

Any person in public accounting practice, regardless of the extent or degree of the practice, shall be covered by this chapter.

History: Rule 3-88, eff 18 Apr 88.

31.0528 Basic requirements of study hours.

(a) For the calendar year 1989, each certified public accountant and public accountant shall file, on a form prescribed by the board, a certification as to the completion of at least 40 hours in continuing education programs as set forth in 31.0531 ASAC, except that at least 8 hours of continuing education shall be in subjects pertaining to accounting or auditing as designated by the board, as set forth 31.0539 ASAC.

- (1) The certificate of continuing education form shall be filed no later than November 30, 1988.
- (2) If this continuing education requirement is not met, a permit to practice public accounting during the calendar year ended December 31, 1989 will be suspended, as provided by 31.0221(a)(1) A.S.C.A., until the 1989 continuing education requirement has been satisfied.
- (3) The board will not suspend a permit to practice to any applicant who has not fully complied with the 1989 continuing education requirement in cases where failure by the applicant to fulfill the requirement has been caused by reason of:
 - (a) Health, as certified by a medical doctor; or
 - (b) Military service on extended active duty with the armed forces of the United States; or
- (4) Other good and valid causes, as determined and approved by the board.

(b) For a permit to practice public accountancy covering calendar year 1990, and for each biennium thereafter, an applicant shall file, together with the application for a permit to practice, a certification as to the completion of at

least 80 hours in continuing education programs, as set forth in 31.0531 ASAC, except that at least 16 hours of continuing education shall be in subjects pertaining to accounting or auditing as designated by the board, as set forth in 31.0539 ASAC.

History: Rule 3-88, eff 18 Apr 88.

31.0529 Hours which qualify.

Continuing education credit shall be given for whole hours only, with a minimum of 50 minutes constituting one class hour. No credit for continuing education hours shall be allowed for time expended for study outside of the classroom nor shall additional credits be allowed for programs or courses repeated in any single year. The hours spent in continuing education programs shall be measured, as follows:

- (1) A one-day program, other than a university or college course, of not less than 6 hours shall equal 8 continuing education hours;
- (2) One hour of attendance in a group program, other than a university or college course shall equal one continuing education hour;
- (3) Each hour certified by the sponsor of an individual self-study program shall equal one continuing education hour;
- (4) An academic credit hour for a semester earned from an accredited university or college as specified in section 31.0511(a)(1) ASAC shall equal 15 continuing education hours;
- (5) An academic credit hour for a quarter earned from an accredited university or college as specified in section 31.0511(a)(1) shall equal 10 continuing education hours;
- (6) Each university or college classroom hour in noncredit study shall equal one continuing education hour;
- (7) Each hour of university or college classroom work as a teacher, instructor, or lecturer shall equal one continuing education hour; however, the total cumulative continuing education hours earned by this method shall not exceed 40 credit hours towards continuing education in any biennium: credit for tri-semester course shall be awarded only once during a 3-year period;

- (8) Each hour spent at a group program, other than a university or college course by a lecturer, discussion leader, or speaker shall equal one continuing education hour if the attendees of the group program shall be able to earn continuing education credit as a result of the attendance; and provided that the total cumulative hours earned by this method shall not exceed 40 credit hours toward continuing education in any biennium; credit for the same course shall be awarded only once during a 3 year period;
- (9) Fifty percent of each hour spent as a reviewer at a formally sponsored inter-office or interfirm quality review program; and provided that the credit shall not exceed 20 continuing education hours in any biennium;
- (10) Credit may be allowed for authoring articles and books published in any one year, provided that they contributed to the professional competence of the licensee. Credit for the publications may be given on a self-declaration basis; provided the credit shall not exceed 20 continuing education hours in any biennium; and
- (11) An applicant for a permit to practice shall be allowed 80 hours of continuing education credit for passing either the AICPA or NSPA examination for the 2 years following the year in which the applicant is notified of passing the examination or 40 hours for the succeeding year of the permit renewal period; provided credit allowed in the periods specified in this paragraph may not be carried over to any other period.

History: Rule 3-88, eff 18 Apr 88.

31.0530 Deficiency in hours and carryover hours.

- (a) In the event an applicant, except as provided in 31.0541 ASAC and except for the requirements for calendar year 1989, is found to be lacking in continuing education hours as of December 31 of any biennium, the applicant shall be required to make up the deficient hours in the following 6 months, in addition to completing the minimum 80 hours of continuing education required for a pen-nit for the following biennium.
- (b) In the event the total continuing education hours is found to be in excess of the minimum

requirements in any biennium, the applicant may carryover the excess to the following biennium's requirements but the carryover shall be limited to 40 hours.

History: Rule 3-88, eff 18 Apr 88.

31.0531 Program classifications.

The continuing education programs are classified into 4 categories, as follows:

- (1) Group programs which automatically qualify, as prescribed in 31.0534 ASAC;
- (2) Individual self-study programs which automatically qualify as prescribed in 31.0535 ASAC;
- (3) Group programs which require board approval, as prescribed in 31.0536 ASAC; and
- (4) Individual self-study programs which require board approval as prescribed in 31.0537 ASAC.

History: Rule 3-88, eff 18 Apr 88.

31.0532 Requirements for group programs.

The requirements of each group program shall be:

- (1) That it requires attendance;
- (2) That it be at least 50 minutes in duration;
- (3) That it is conducted by a qualified instructor or discussion leader;
- (4) That its sponsor shall maintain written records of its attendees and of the program outline for a period of 2 years immediately following the conclusion of the program; and
- (5) That written evidence of attendance shall be issued to each attendee by the sponsor, with the suggested continuing education credit hours shown thereon, exclusive of any study or preparation time.

History: Rule 3-88, eff 18 Apr 88.

31.0533 Requirements for individual self-study programs.

The requirements of each individual self-study program shall be:

- (1) That it is conducted by a qualified sponsor;

- (2) That a certificate of completion is issued by the sponsor specifying subject matter and recommended continuing education credit hours; and
- (3) That its sponsor shall maintain written records of each student and of the program outline for a period of 2 years immediately following the conclusion of the program.

History: Rule 3-88, eff 18 Apr 88.

31.0534 Group programs which automatically qualify.

Subject to compliance with the requirements of 31.0532 ASAC, the group programs which automatically qualify shall be:

- (1) Professional development courses and other technical sessions of non-profit nationally recognized accounting associations, such as, the American Institute of Certified Public Accountants, the National Society of Public Accountants, the American Society of Women Accountants, the National Association of Accountants, the National Association of State Boards of Accountancy, and their respective state societies, chapters, or branches; and
- (2) Credit or noncredit courses offered by universities and colleges, provided that the institutions are accredited as specified under 31.0511(a)(1) ASAC.

History: Rule 3-88, eff 18 Apr 88.

31.0535 Individual self-study programs which automatically qualify.

Subject to compliance with the requirements of 31.0533 ASAC, the individual self-study programs which automatically qualify are educational courses through correspondence, audiovisual methods, and other educational techniques of non-profit nationally recognized accounting associations, such as, the American institute of Certified Public Accountants, the National Society of Public Accountants, the American Society of Women Accountants, the National Association of Accountants, the National Association of State Boards of Accountancy, and their respective state societies, chapters or branches.

History: Rule 3-88, eff 18 Apr 88.

31.0536 Group programs which require approval.

Subject to compliance with 31.0532 ASAC, each group program which is not specifically listed under 31.0534 ASAC shall be required to have its sponsor apply for approval of the programs by the board on a form prescribed by the board.

History: Rule 3-88, eff 18 Apr 88.

31.0537 Individual self-study programs which require approval.

Subject to compliance with the requirements of 31.0533 ASAC, each individual self-study program which is not specifically listed under 31.0535 ASAC, shall be required to have its sponsor apply to the board on a form prescribed by it, and to obtain the approval of the board of the program.

History: Rule 3-88. Eff, 18 Apr 88.

31.0538 Duration of approval.

The approval by the board of each group program and each individual self-study program shall expire at the conclusion of each program or on December 31 of each year, whichever is later; provided approval may be withdrawn by the board at any time for good cause.

History: Rule 3-88, eff 18 Apr 88.

31.0539 List of continuing education subjects.

- (a) Subjects qualifying for continuing education under this chapter include, but are not limited to:
 - (1) Accounting and auditing subjects directly related to the application of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records or the preparation of financial statements in accordance with generally accepted accounting principles or both;
 - (2) Taxation;
 - (3) Management services;
 - (4) Computer science;
 - (5) communication arts;
 - (6) Mathematics, statistics, probability, and quantitative applications to business;

- (7) Economics;
 - (8) Business law;
 - (9) Functional fields of business, (finance, production, marketing, personnel relations, business organization, and business management);
 - (10) Social environment of business;
 - (11) Administrative practice (engagement letters, fees structure, personnel, etc.); and
 - (12) Specialized financial areas of business, industry, and profession.
- (b) In order for a subject to be designated as accounting or auditing for the purposes of 31.0528 ASAC, sponsors shall request approval from the board, citing the reasons why a particular course or courses should be designated as an accounting or auditing subject.

History: Rule 3-88. eff 18 Apr 88.

31.0540 Information requirements.

Accompanying an application for a permit to practice, each certified public accountant and each public accountant shall also file, on a form prescribed by the board, a certification relating to the applicant's continuing education setting forth the following:

- (1) Name of sponsor of course;
- (2) Address of sponsor;
- (3) Address at which the course was given;
- (4) Title of course and description of its contents;
- (5) Principal instructor or discussion leader;
- (6) Dates attended;
- (7) Hours claimed; and
- (8) Written evidence of attendance at group programs or completion of individual self study programs.

History: Rule 3-88. eff 18 Apr 88.

31.0541 Exceptions.

The board may issue a permit to practice to any applicant who has not fully complied with the

continuing education requirement in cases where failure by the applicant to fulfill the requirement has been caused by reason of:

- (1) Health, as certified by a medical doctor; or
- (2) Military service on extended active duty with the armed forces of the United States; or
- (3) Other good and valid causes, as determined and approved by the board.

History: Rule 3-88. eff 18 Apr 88.

31.0542 Certification to other jurisdiction.

The board shall certify upon request, to any state as to the compliance with continuing education requirements under the laws of the territory by any of its licensees.

History: Rule 3-88. eff 18 Apr 88.

31.0543 Exception for temporary permits.

This subchapter governing continuing education shall not apply to any applicant for a temporary permit to be issued under 31.0219(3)(b) A.S.C.A.

History: Rule 3-88, eff 18 Apr 88.

VII. PROFESSIONAL CORPORATION

31.0544 Name.

A professional public accounting corporation shall adopt a name pursuant only to the approval of the board. The corporation's practice and the manner in which it holds itself out to the public shall be in consonance with Subchapter VIII of this chapter, "Rules of Conduct".

History: Rule 3-88, eff 18 Apr 88.

31.0545 Registration.

A professional public accounting corporation shall file an application setting forth the information as may be prescribed or required by the board, and shall furnish the additional information bearing upon the issuance of the license as it requires.

History: Rule 3-88, eff 18 Apr 88.

31.0546 Annual report.

A professional public accounting corporation shall file an annual report as of December 31 of each year not later than March 31 of the following year setting

forth the information as maybe prescribed or required by the board including:

- (1) The names of shareholders and their share of ownership;
- (2) The names of directors, officers, licensed employees performing professional services;
- (3) Amendments of its articles of association and by-laws during the current year; and
- (4) Whether liability insurance with minimum coverage prescribed by 31.0549 ASAC, has been obtained.

History: Rule 3-88, eff 18 Apr 88.

31.0547 Capital stock.

A professional public accounting corporation shall provide in its by-laws a provision whereby its capital stock owned by a disqualified persons, or a deceased person, shall be transferred to the corporation provided it has sufficient retained earnings or to its licensed employees, within the time specified by the American Samoa Code Annotated.

History: Rule 3-88, eff 18 Apr 88.

31.0548 Professional services.

A professional public accounting corporation shall render the services, as defined in Chapter 2.31, A.S.C.A. It shall render the services through a person who is licensed by the board. A professional public accounting corporation, however, may employ a person, who is not licensed by the board, as is the general pattern in the practice of public accountancy; provided the work of the unlicensed person is performed under the supervision of a licensed person, who shall assume all responsibilities of the professional services.

History: Rule 3-88, eff 18 Apr 88.

31.0549 Liability insurance: security.

- (a) The board will survey all locally licensed insurance carriers each January to determine the availability and cost of professional liability insurance.
- (b) If at its May meeting the board determines that professional liability insurance is offered locally at a cost which the board considers reasonable,

all professional accounting corporations will be required to meet the requirements of 31.0549(c), ASAC.

- (c) Within 6 months of the notice by the board that it has determined that professional liability insurance is available, a professional public accounting corporation, as a condition of obtaining a certificate pursuant to Chapter 2.31 A.S.C.A., shall provide at least \$34,000 for each occurrence and an annual aggregate of \$100,000 of professional liability insurance for claims against it arising out of rendering professional service.

History: Rule 3-88, eff 18 Apr 88.

VIII. RULES OF CONDUCT

31.0550 Independence, integrity, and objectivity.

- (a) Independence. A licensee shall not express an opinion on financial statements of an enterprise in a manner as to imply that the licensee is acting as an independent public accountant with respect thereto unless the licensee is independent with respect to the enterprise independence shall be considered to be impaired if, for example:
 - (1) During the period of the licensee's professional engagement, or at the time of expressing an opinion, the licensee:
 - (A) Had or was committed to acquire any direct or material indirect financial interest in the enterprise; or
 - (B) Was a trustee of any trust or executor or administrator of any estate if the trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise; or
 - (C) Had any joint closely-held business investment with the enterprise or any officer, director, or principal stockholder thereof which was material in relation to the net worth of either the licensee or the enterprise;
 - (1) Had any loan to or from the enterprise or any officer, director,

or principal stockholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms, and requirements:

- (i) Loans obtained by the licensee which are not material in relation to the net worth of the borrower;
- (ii) Home mortgages; and
- (iii) Other secured loans, except those secured solely by a guarantee of the licensee;

(2) During the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion, the licensee:

- (A) Was connected with the enterprise as a promoter, underwriter, or voting trustee, a director or officer or in any capacity equivalent to a member of management or of an employee; or
- (B) Was a trustee of any pension or profit-sharing trust of the enterprise; and

(3) Paragraphs (1) and (2) are not intended to be all inclusive examples.

- (b) A licensee, in the performance of professional services shall not knowingly misrepresent facts, and shall not subordinate the licensee's judgment to others. In tax practice, however, a licensee may resolve doubt in favor of a client as long as there is reasonable support for the position.
- (c) A licensee shall not pay a commission to obtain a client, nor accept a commission for a referral to a client of products or services of others. This subsection shall not prohibit payments for the purpose of all, or a material part, of an accounting practice or retirement payments to persons formerly engaged in the practice of public accountancy, or payments to the heirs or estates of those persons.

- (d) A licensee shall not offer or perform professional services for a fee which is contingent upon the findings or results of those services; provided this subsection shall not apply to professional services involving federal, territory, state, or other taxes in which the findings are those of the tax authorities and not those of the licensee, nor shall it apply to professional services for which the fees are to be fixed by courts or other public authorities, and which are, therefore, indeterminate in amount of the time the professional services are undertaken.
- (e) A licensee shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs the licensee's independence or objectivity in rendering professional services.

History: Rule 3-88, eff 18 Apr 88.

31.0551 Competence and technical standards.

- (a) A licensee shall not undertake any engagement for the performance of professional services which the licensee cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with 31.0551(b) ASAC and 3 1.0551(c) ASAC.
- (b) A licensee's name shall not be permitted to be associated with financial statements in a manner as to imply that the licensee is acting as an independent public accountant with respect to the financial statements unless the licensee has complied with applicable generally accepted auditing standards. Statement on Auditing Standards issued by the American institute of Certified Public Accountants, and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures therefrom shall be justified by those who do not follow them.
- (c) A licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if the financial statements contain any departure from the accounting principles which has a material effect on the financial statements taken as a whole, unless the licensee can demonstrate

that by reason of unusual circumstances, the financial statements would otherwise have been misleading. In that case, the licensee's report shall describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement. For purposes of this subsection, generally accepted accounting principles are considered to be defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

- (d) A licensee, in the performance of professional services, shall not permit the licensee's name to be used in conjunction with any forecast of future transactions in a manner which may reasonably lead to the belief that the licensee vouches for the achievability of the forecast.

History: Rule 3-88, eff 18 Apr 88.

31.0552 Responsibilities to clients.

- (a) A licensee, without the consent of the client shall not disclose any confidential information pertaining to the client obtained in the course of performing professional services.
- (b) Subsection (a) does not:
 - (1) Relieve a licensee of any obligations under 31.0551(b) ASAC and 31.0551(c) ASAC;
 - (2) Affect in any way a licensee's obligation to comply with a validly issued subpoena or summons enforceable by order of a court; or
 - (3) Prohibit disclosures in the course of a quality review of a licensee's professional services; or
 - (4) Preclude a licensee from responding to any inquiry made by the board or any investigative or disciplinary body established by law or formally recognized by the board.
- (c) Members of the board and professional practice reviewers shall not disclose any confidential client information which comes to their attention

from licensees in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish the information to an investigative or disciplinary body of the kind referred to in subsection (b).

- (d) A licensee shall furnish to a client or former client, upon request made within a reasonable time after original issuance of the document in question:
 - (1) A copy of a tax return of the client;
 - (2) A copy of any report, or other document, issued by the licensee to or for the client;
 - (3) Any accounting or other records belonging to, or obtained from or on behalf of, the client which the licensee removed from the client's premises or received for the client's account, but the licensee may make and retain copies of the documents when they form the basis of work done; and
 - (4) A copy of the licensee's working papers, to the extent that the working papers include records which would ordinarily part of the client's books and records and are not otherwise available to the client.

History: Rule 3-88, eff 18 Apr 88.

31.0553 Other responsibilities and practices.

- (a) Discreditable acts. A licensee shall not commit any act which reflects adversely on the licensee's fitness to engage in the practice of public accountancy.
- (b) Acting through others. A licensee shall not permit others to carry out on the licensee's behalf, either with or without compensation, acts which, if carried out by the licensee, would place the licensee in violation of the rules of conduct.
- (c) A licensee shall not use or participate in the use of any form of public communication having reference to the licensee's professional services which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes but is not limited to a statement or claim which:

- (1) Contains a misrepresentation of fact; or
 - (2) Is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or
 - (3) Contains any testimonial or laudatory statement, or other statement or implication that the licensee’s professional services are of exceptional quality; or
 - (4) Is intended or likely to create false or unjustified expectations of favorable results; or
 - (5) Implies educational or professional attainments or licensing recognition not supported in fact; or
 - (6) States or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accountancy, if this is not the case; or
 - (7) or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will be charged; or
 - (8) Contains other representations or modifications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.
- (d) A licensee shall not by any direct personal communication solicit an engagement to perform professional services:
- (1) If the communication would violate 31.0553(c) ASAC and it were a public communication; or
 - (2) By the use of coercion, duress, compulsion, intimidation, threats, overreaching, or vexations or harassing conduct.
- (e) A licensee shall not practice public accountancy under a firm name which is misleading in any way, as to the legal form of the firm, or as to the persons who are sole practitioners, partners, officers, or shareholders of the firm, or as to any matter with respect to which public

communications are restricted by 31.0553(c) ASAC. A firm name shall not be used by a licensee in the practice of public accountancy unless the name has been registered with and approved by the board. However, names of one or more past partners or shareholders may be included in the firm name of a partnership or corporation or its successor, and a partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to 2 years after becoming a sole practitioner.

- (f) A licensee, when requested, shall respond to communications from the board within 30 days of the mailing of the communications by registered or certified mail.

History: Rule 3-88, eff 18 Apr 88.

TITLE 31 – CHAPTER 06 – AMERICAN SAMOA BOARD OF COSMETOLOGY

Sections:

- 31.0601 Definitions.
- 31.0602 Authority; purpose.
- 31.0603 Chairperson and officers.
- 31.0604 Meetings and hearings.
- 31.0605 Attendance.
- 31.0606 Quorum.
- 31.0607 Committees.
- 31.0610 Application for operators license.
- 31.0620 Application for beauty salon.
- 31.0630 Fees.
- 31.0635 Orders to show cause.
- 31.0636 Renewals.

31.0601 Definitions.

As used in this chapter the terms defined in 31.1502 A.S.C.A., shall have the meaning ascribed to them in that section and as supplemented, explained and further defined in this chapter. For the purpose of this chapter “practiced as an operator” shall mean working at least halftime for 12 months in any given year for each year required; the burden shall be upon the applicant to establish and prove these working periods. “Full time” shall mean at least 5 hours per day and 5 days a week.

History: Rule 4-88, eff 16 Jun 88, § 2.

31.0602 Authority; purpose.

The board of cosmetology derives its authority to promulgate these rules pursuant to 31.1502(a)(1) A.S.C.A.

The American Samoa Board of Cosmetology interprets the interest and the intent of the legislature in enacting Chapter 31.15 A.S.C.A., to be the protection of the health, affording to such individuals and effective and practical protection against incompetent, inexperienced, unlawful, and fraudulent acts of operators and cosmetician with whom they come in contact. It is the board’s goal to upgrade and cultivate the cosmetology vocation as well as promoting professionalism and financial stability in the vocation.

History: Rule 4-88, eff 16 Jun 88, § 2.

31.0603 Chairperson and officials.

The chairperson, vice-chairperson and any other officers of the board shall be elected by the board at the meeting held on the second Wednesday in January or as soon thereafter as possible.

History: Rule 4-88, eff 16 Jun 88, § 2.

31.0604 Meetings and hearings.

Regular meetings and hearings of the board shall be held in the Office of Development

Planning, unless otherwise announced, on the second Wednesday of the months of January, April, July and October at 3:00 p.m. 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 and hearings shall be open to the public unless otherwise determined by the chair.

History: Rule 4-88, eff 16 Jun 88, § 2.

31.0605 Attendance.

The board by a majority vote shall recommend to the Governor the need for a replacement for any member who misses 3 consecutive meetings without good cause. Good cause shall include health reasons and off-island business trips.

History: Rule 4-88, eff 16 Jun 88, § 2.

31.0606 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 one member still in attendance. No official business can be conducted without a quorum.

History: Rule 4-88, eff 16 Jun 88, § 2.

31.0607 Committees.

The chairperson may name committees of the board to perform investigation or tasks to report back to the board. A site visit to any location proposed as a beauty shop or salon under consideration may be made by a committee of the board as a whole or committee of at least 2 members of the board. The committee shall report to the board in a public session its recommendation following each site visit. The board may accept, reject or amend the recommendation of any committee. The board may request assistance from law enforcement personnel including police officers and attorneys from the Attorney General’s office to accompany them during their site or inspection visitations.

History: Rule 4-88, eff 16 Jun 88, § 2.

31.0610 Application for operator’s license.

In accordance with the provisions of 31 .0504 A.S.C.A., the board hereby requires:

- (a) Three references to demonstrate the applicant is of good moral character.
- (b) The demonstration of a valid current license to practice hairdressing and cosmetology in any state of the United States or in any other county which has licensing standards equivalent to those of any state of the United States by showing the original to the board and filing a clear, complete photocopy of the license together with the application. Any license in a language other than in English must be translated into English. For purposes of this rule the term “state” includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to authority of the United States of America.
- (c) Sufficient references but no less than 2 that the applicant has practiced as an operator for 3 out

of the 5 years immediately preceding the application filing date.

- (d) In lieu of the requirement stated in paragraph (c) above, the applicant may show that he or she has a valid license as required by subsection (b) above and that the applicant has successfully completed a board approved refresher course at an accredited school in any state in the United States or in any country which has accrediting standards equivalent to any state of the United States within one year preceding the application date.
- (e) A conditional license may be granted to an applicant who has substantially complied with the above qualifications. “Substantial compliance” shall mean the applicant is of good moral character, has acquired a license as required by subsection (b) above, has practiced as an operator at least 2 out of the 4 years immediately preceding this application date.
- (f) All applicants must complete and file an application on a form approved by the board. Form CB 100, as it may be amended from time to time, is hereby approved as an official form for purposes of this chapter. All applications shall be certified by the applicant under penalty of perjury that the statements contained in the application are true.
- (g) The burden of proof that the accrediting standards required by subsections (b) and (d) above are equivalent to any state of the United States is upon the applicant.

History: Rule 4-88, eff 16 Jun 88, § 2.

31.0620 Application for beauty salon.

- (a) In accordance with the provisions of 31.1505 A.S.C.A., the board hereby requires:
 - (1) Prior written certification by the director of medical services that the salon meets the standards of sanitation required by the rules of the department of health no longer than 30 days prior to the date of this application.
 - (2) Proof that a board licensed operator will be working full-time in the salon. The applicant will provide the name(s) of the

operator(s) and file a photocopy of the operator’s license.

- (3) Proof that there is a bathroom on the premises and available directly from the salon without exiting the salon.
- (4) Proof of sufficient security of chemicals and other potentially dangerous equipment from non-licensed persons, children, and from theft.
- (5) Filing a copy of the plot plan and a floor plan of the property that will also be filed with the Zoning Board.
- (b) No license shall be granted, renewed, reinstated, or restored if the location of the beauty salon is in a private home without a separate entrance and not sealed from the residential portion of the home.

History: Rule 4-88, eff 16 Jun 88, § 2.

31.0630 Fees.

- (a) The fee for a licensed operator shall be \$15.00 for an application, and for each renewal per year payable by December 31 of each year.
- (b) The fee for a licensed beauty salon shall be \$25.00 for an application, and for each renewal per year payable by December 31 of each year.
- (c) Fees shall be paid by certified check, money order, or be uncertified check drawn on a local bank pre-printed with the applicant’s name and account number. Any check that is returned by the bank upon which it is drawn unpaid shall result in revocation of the license sought and a charge of \$15.00 fee for the dishonored check. All checks shall be made out to “ASG Treasurer - Cosmetology Board”. No cash or stamps will be accepted.

History: Rule 4-88, eff 16 Jun 88, § 2.

31.0635 Orders to show cause.

The board shall issue an order to show cause to any operator or beauty salon when the board determines that revocation or suspension of any license is warranted. The requirements of 31.1508 A.S.C.A., shall be complied with at the hearing on the order to show cause.

History: Rule 4-88, eff 16 Jun 88, § 2.

31.0636 *Renewals.*

- (a) All operators may maintain their current license in the state or country of original issuance, if they so wish. A life-time license from a country is presumed to be valid at all times unless otherwise declared.
- (b) No renewals shall be granted without an updated health permit.
- (c) No business license for a salon will be approved prior to approval by this Board as a salon. Section 31.1505 A.S.C.A., must be complied with strictly.

History: Rule 4-88, eff 16 Jun 88, § 2.

END OF TITLE 31 – PROFESSIONS

TITLE 32 – LABOR (RESERVED)

END OF TITLE 32 – LABOR (RESERVED)

TITLE 33 – (RESERVED)

END OF TITLE 33 – (RESERVED)

TITLE 35 – (RESERVED)

END OF TITLE 35 – RESERVED

TITLE 37 – PROPERTY

Chapters:

- 01 Relocation Assistance and Real Property Acquisition
- 02 Crop Damage Claims
- 03 Relocation Policy for ASG Tenants Displaced by ASG sponsored Redevelopment Programs

TITLE 37 – CHAPTER 01 – RELOCATION ASSISTANCE & REAL PROPERTY ACQUISITION

Sections:

- I. GENERAL PROVISIONS*
- 37.0101 Authority.
- 37.0102 Purpose.
- 37.0103 Definitions.

- II. RELOCATION ASSISTANCE*
- 37.0105 Moving and dislocation expenses.
- 37.0106 Replacement housing for homeowners
- 37.0107 Replacement housing for tenants and certain others.
- 37.0108 Relocation assistance advisory programs.
- 37.0109 Assured availability of replacement housing.
- 37.0110 Payment procedure-Appeals.
- 37.0111 Contracts for services.
- 37.0112 Funding.
- 37.0113 Payments not income or resources.

- III. LAND ACQUISITION*
- 37.0115 Purpose.
- 37.0116 Practices generally.
- 37.0117 Compensation by benefit from
- 37.0118 Improvements acquisition.
- 37.0119 Tenant improvement payments
- 37.0120 Expenses of title transfer
- 37.0121 Procedures issuance.

I. GENERAL PROVISIONS

37.0101 Authority.

The rules codified in this chapter are promulgated pursuant to authority granted the Governor by 37.2040 A.S.C.A.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 1.01.

37.0102 Purpose.

The purpose of this chapter is to provide guidelines for relocation payments and relocation assistance and to otherwise enable the ASG to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, PL 91-646, 2 Jan 71.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 1.02.

II. RELOCATION ASSISTANCE

37.0103 Definitions.

As used in this chapter, the term:

- (1) “agency” means any department, agency, or instrumentality of the territory;
- (2) “business” means any lawful activity, excepting a farm operation, conducted primarily:
 - (A) for the purchase, sale lease, and rental of personal and real property; and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
 - (B) for the sale of services to the public; or
 - (C) by a nonprofit organization; or
 - (D) solely for the purposes of 37.0105(a) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such a play or displays are located on the premises on which any of the above activities are conducted;
- (3) “displaced person” means any person who, on or after the effective date of the rules codified in this chapter, moves from real property, or 4property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project

undertaken by an agency; and solely for the purposes of 37.0105(a), (b) and 37.0108 as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project;

- (4) “farm operation” means any activity conducted solely or primarily for the production of 1 or more agriculture products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support;
- (5) “mortgage” means the same as commonly defined in American jurisprudence except that it is an encumbrance against personal property and not real property when a dwelling has been separated from communal land per 37.1502 A.S.C.A;
- (6) “nonprofit organization” means a corporation, partnership, individual, or other public or private entity, engaged in a business, professional, or instructional activity on a nonprofit basis, necessitating fixtures, equipment, stock in trade, or other tangible property for the carrying on of the business, profession, or institutional activity on the premises;
- (7) “person” means any individual, partnership, corporation, or association.

History: Relocation Ant. and Prop. Acq. Regs. eff prior to, 1975, Reg. 1.03.

II. RELOCATION ASSISTANCE

37.0105 Moving and dislocation expenses.

(a) If an agency acquires real property for public use, there shall be fair and reasonable payments to displaced persons and business as required by this chapter, for:

- (1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

- (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expense that would have been required to relocate such property, as determined by the Governor; and

- (3) actual reasonable expenses in searching for replacement business or farm.

- (b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, not to exceed \$300, and a dislocation allowance of \$200;

- (c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than \$2,500, nor more than \$10,000. In the case of a business no payment shall be made under this subsection unless the agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not part of a commercial enterprise having at least 1 other establishment not being acquired by the agency, which is engaged in the same or similar business. For purposes of this subsection, the term average annual net earnings” means 1/2 of any net earnings of the business or farm operation, before federal, state, and local income taxes, during the 2 taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for such project, or during such other period as the agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the

business or farm operation to the owner, his spouse, or his dependents during such period.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.01.

37.0106 Replacement housing for homeowners.

(a) In addition to payments otherwise authorized by this chapter, the Governor shall make an additional payment not in excess of \$15,000.00 to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

- (1) The amount, of any, which when added to the acquisition cost of the dwelling acquired, equals the actual cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market, or the amount determined by the territory as necessary to purchase a comparable dwelling, whichever is less;
- (2) The amount, if any, which will compensate the displaced person for any increased interest costs which the person is required to pay for financing the acquisition of a comparable replacement dwelling. The amount shall be paid only if the dwelling acquired was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial

banks in the general area in which the replacement dwelling is located;

- (3) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but, not including prepaid expenses.
- (b) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of a 1-year period beginning on the date on which he receives final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 202.

37.0107 Replacement housing for tenants and certain others.

In addition to amounts otherwise authorized by this chapter, the Governor shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under 37.0106, which dwelling was actually and lawfully occupied by the displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. The payment shall be either:

- (1) the amount necessary to enable the displaced person to lease or rent for a period not to exceed 4 years, a decent, safe, and sanitary dwelling of standards adequate to accommodate the person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed \$4,000; the payment shall be determined by subtracting from the amount the tenant actually pays for replacement dwelling or, if lesser, the amount determined by the territory necessary to rent a comparable dwelling for the next 4 years, the following amount:
 - (A) Forty-eight times the average monthly rental paid by the relocated individual or family during the last 3 months;

- (B) If such average monthly rental is not reasonably equal to market rentals for similar dwellings, the economic rent as established by the territory shall be used;
 - (C) The “rent being paid” shall include any rent supplements supplied by others except when, by law, such supplement is to be discontinued upon vacation of the property; or
- (2) the amount necessary to enable the person to make a down payment, including incidental expenses described in 37.0106 (a) (3) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed \$4,000 except that if the amount exceeds \$2,000, the person must equally match any amount in excess of \$2,000, in making the down payment.

History: Relocation Ant, and Prop. Acq. Regs. eff prior to 1975. Reg. 2.03.

37.0108 Relocation assistance advisory programs.

- (a) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person, the Governor shall provide a relocation assistance advisory program for displaced persons which shall offer the services prescribed in subsection (b) of this section. If the government determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer the person relocation advisory services under the program.
- (b) The relocation assistance program will take into consideration:
 - (1) the needs of displaced persons, business concerns, and nonprofit organizations for relocation assistance;
 - (2) type of assistance necessary to assist owners of displaced businesses and farm operations in obtaining and becoming established in

suitable business locations or replacement farms;

- (3) the need to supply information concerning programs of the federal government offering assistance to displaced persons and business concerns;
- (4) the need to assist in minimizing hardships to displaced persons in adjusting to relocation; and
- (5) the need to secure, to the greatest effect practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of the relocation program.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.04.

37.0109 Assured availability of replacement housing.

Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person on or after the effective date of the rules codified in this chapter, the Governor shall assure that, within a reasonable period of time prior to displacement, there will be available in areas not generally less desirable in regard to public utilities, and public and commercial facilities, and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings equal in number to the number of displaced persons who require dwellings and reasonably accessible to their places of employment.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.05.

37.0110 Payment procedure-Appeals.

The Governor will insure that:

- (1) the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;
- (2) a displaced person who makes proper application for a payment authorized by this

chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and

- (3) any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have his application reviewed by the Governor.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.06.

37.0111 Contracts for services.

In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the Governor may enter into contracts with any individual, firm, association, or corporation for services in connection with those programs, or may carry out its functions under this chapter through any federal agency or any department or instrumentality of the territory.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.07.

37.0112 Funding.

Funds appropriated or otherwise available to any agency for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out the provisions of this chapter as applied to that program or project.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.08.

37.0113 Payments not income or resources.

No payment received by a displaced person under this chapter shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any territorial law or for the purposes of the territory's personal income tax law, corporation tax law, or other tax laws. These payments shall not be considered as income or resources of any recipient of public assistance and the payment shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 2.09.

III. LAND ACQUISITION

37.0115 Purpose.

This article prescribes the procedures for the acquisition of real property.

History: Relocation Asst. and Prop. Acq. Regs. eff prior to 1975, Reg. 3.01.

37.0116 Practices generally.

(a) In acquiring real property the government will to the greatest extent practicable:

- (1) make every reasonable effort to acquire real property expeditiously through negotiation;
- (2) before the initiation of negotiations have the real property appraised and give the owner or his representative an opportunity to accompany the appraiser during the inspection of the property;
- (3) before the initiation of negotiations, establish an amount which is believed to be just compensation for the real property, and make a prompt written offer to acquire the property for that amount. In no event will the just compensation offered be less than the government's approved appraisal of the fair market value of such property. At the time the government makes an offer to purchase real property, the owner of that property will be provided with a written statement of the basis for the amount estimated to be just compensation. In determining just compensation for the property, any increase or decrease of the fair market value caused by the public improvement for which the property is acquired prior to the date of valuation will be disregarded, other than that caused by physical deterioration;
- (4) before requiring any owner to surrender possession of any real property:
 - (A) pay the agreed purchase price; or
 - (B) deposit with the court, for the benefit of the owner, an amount not less than the government's approved appraisal of the fair market value of the property; or

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- (C) pay the amount of the award of compensation in a condemnation proceedings for the property;
 - (5) if interest in the real property is to be acquired by exercise of power of eminent domain, institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of this real property; and
 - (6) if the acquisition of only part of the property will leave its owner with an uneconomic remnant, offer to acquire that remnant.
- (b) in acquiring real property, to the greatest extent practicable, the government will not:
- (1) schedule a construction or development of the public improvement that will require any person lawfully occupying real property to move from a dwelling, or to move his business or farm operation, without giving that person at least 90 days' written notice of the date he is required to move;
 - (2) if acquired property is rented to the former owner or tenant for a short term or subject to termination by the government on short notice, charge a rent that is more than the fair rental value of the property to a short-term occupant;
 - (3) advance the time of condemnation;
 - (4) defer negotiations, condemnation, or deposit of funds in court for use of the owner; or
 - (5) take any course of action to compel an owner to agree to a price for his property.
- (c) Should a court determine condemnation was unauthorized or the property owner obtain a judgment in the nature of inverse condemnation, or should the government abandon condemnation, then the owner shall be reimbursed for reasonable expenses of litigation, in line with Section 304, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

- (d) Nothing in this chapter should be construed to preclude a donation by an owner after his property has been appraised and the full amount of the estimated just compensation has been tendered to him.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.03.

37.0117 Compensation by benefit from project.

- (a) Notwithstanding the provisions of 37.0116, where it is shown by appropriate means that a projects will result in a direct benefit to a person, family, or village having custody of lands required by the government for such project, and where such benefit will at a minimum equal the value of lands to be acquired and/or damaged, such benefit to the owner will constitute just compensation; provided, that in all cases .he government shall compensate owners for immediate losses of crops, food-producing trees, and manmade improvements. This determination of equal value in benefits for the land use must be agreed to by the property owners in writing in the presence of the secretary for Samoan affairs.
- (b) When the acquisition of land under this article is made for projects or purposes which are not a direct benefit to the village or family having custody of such land, the government will provide compensation in accordance with 37.0116.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.04.

37.0118 Improvements acquisition.

In acquiring any interest in real property the government will acquire at least an equal interest in all buildings, structures, or other improvements located on that real property which will be removed or which will be adversely affected by the completed project.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.04.1

1. Ch. 3 of the Relocation Assistance and Real Property Acquisition Regulations contained two regulations numbered 3.04.

37.0119 Tenant improvement payments.

- (a) In case of the building, structure, or other improvement owned by the tenant on real property acquired for a project to which this article applies, the government will, subject to subsection (b) of this section, pay the tenant the larger of:
- (1) the fair market value of the improvement, as established by the appraisal board, assuming its removal from the property; or
 - (2) the enhancement to the fair market value of the real property.
- (b) Payments will also be made for improvements that are damaged as well as those which must be removed.
- (c) A payment may not be made to a tenant under subsection (a) of this section unless:
- (1) the tenant, in consideration for the payment, assigns, transfers, and releases to the government all his right, title and interest in the improvement;
 - (2) the owner of the land involved disclaims any interest in the improvements; and
 - (3) the payment is not duplicated by any payment otherwise authorized by law or rule.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.05.

37.0120 Expenses of title transfer.

As soon as possible after real property' has been acquired, the government shall reimburse the owner for:

- (1) recording fees, taxes, and similar expenses incidental to conveying the real property to the agency;
- (2) penalty cost for prepayment of any preexisting recorded mortgage entered into in good faith and encumbering the real property.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.06.

37.0121 Procedures issuance.

All departments of the ASG. will issue procedures to assure compliance with this chapter.

History: Relocation Asst. and Prop. Acq. Regs., eff prior to 1975, Reg. 3.07.

TITLE 37 – CHAPTER 02 – CROP DAMAGE CLAIMS

Sections:

37.0201 Crop, plant and tree compensation scheme-Designated.

37.0201 Crop, plant and tree compensation scheme-Designated.

The crop, plant and tree compensation scheme for American Samoa is as follows:

[SEE NEXT PAGE FOR COMPENSATION SCHEME]

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37.0201

Crop, Plant & Tree Compensation Scheme for American Samoa
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	1977 - 1982		1977 - 1982		1977 - 1982		1977 - 1982		1977 - 1982		1977 - 1982	
O'a Tree	.10	.16	2.00	3.14	-0-	-0-	10.00	15.68	-0-	-0-	10.00	15.68
Orange Tree	.10	.16	2.00	3.14	-0-	-0-	20.00	31.36	-0-	-0-	20.00	31.36
Other Plants Trees	.10	.16	2.00	3.14	-0-	-0-	5.00	7.84	-0-	-0-	10.00	15.68
Papaya Tree	.05	.08	.50	.78	-0-	-0-	2.00	3.14	-0-	-0-	-0-	-0-
Passion fruit vine	.10	.16	-0-	-0-	1.00	1.57	-0-	-0-	3.00	4.70	-0-	-0-
Pine	.15	.24	2.00	3.14	-0-	-0-	12.00	18.82	25.00	39.20	-0-	-0-
Pineapple	.10	.16	.50	.78	-0-	-0-	1.00	1.57	-0-	-0-	-0-	-0-
Pig Pen	-0-	-0-	-0-	-0-	3.00	4.70	-0-	-0-	3.00	4.70	-0-	-0-
Poumuli Tree	.20	.31	3.00	4.70	-0-	-0-	15.00	23.52	-0-	-0-	25.00	39.20
Pua Tree	.10	.16	2.00	3.14	-0-	-0-	10.00	15.68	-0-	-0-	20.00	31.36
Pulu	.05	.08	1.00	1.57	-0-	-0-	5.00	7.84	15.00	23.52	-0-	-0-
Roseapple Tree	.10	.16	2.00	3.14	-0-	-0-	10.00	15.68	-0-	-0-	-0-	-0-
Rough Lemon	.10	.16	2.00	3.14	-0-	-0-	20.00	31.36	-0-	-0-	-0-	-0-
Showe Tree	.10	.16	1.50	2.35	-0-	-0-	10.00	15.68	20.00	31.36	-0-	-0-
Soursap (Sasalapa)	.10	.16	1.00	1.57	-0-	-0-	2.00	3.14	-0-	-0-	15.00	23.52
Sugarcane (matina)	.05	.08	-0-	-0-	.25	.39	-0-	-0-	.50	.78	50.00	78.40
Sugarcane (Thatch)	.05	.08	-0-	-0-	.20	.31	-0-	-0-	.25	.39	25.00	39.20
Sweet potatoe	.10	.16	-0-	-0-	.50	.78	-0-	-0-	1.00	1.57	-0-	-0-
Ta'amu	.10	.16	.20	.31	-0-	-0-	5.00	7.84	-0-	-0-	13.00	20.38
Talie Tree	.10	.16	2.00	3.14	-0-	-0-	5.00	7.84	-0-	-0-	20.00	31.36

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Drop, Plant & Tree Compensation Scheme for American Samoa
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	1977 - 1982		1977 - 1982		1977 - 1982		1977 - 1982		1977 - 1982			
Hodges (all)	.10	.16	-0-	-0-	.20	.31	-0-	-0-	.30	.47	-0-	-0-
Ifi Lolo	.30	.47	4.00	6.27	-0-	-0-	20.00	31.36	30.00	47.00	-0-	-0-
Ifi Tree	.10	.16	2.00	3.14	-0-	-0-	5.00	7.84	-0-	-0-	20.00	31.36
Kapok Tree	.10	.16	2.00	3.14	-0-	-0-	5.00	7.84	-0-	-0-	10.00	15.68
Kasava (Tapioka)	.10	.16	-0-	-0-	.50	.78	-0-	-0-	1.00	1.57	-0-	-0-
Kava Tree	.15	.24	2.00	3.14	-0-	-0-	12.00	18.82	25.00	39.20	-0-	-0-
Laga'alli Tree	.10	.16	2.00	3.14	-0-	-0-	10.00	15.68	-0-	-0-	20.00	31.36
Laufao	.05	.08	-0-	-0-	.50	.78	-0-	-0-	1.00	1.57	-0-	-0-
Laufasa	.10	.16	.25	.39	-0-	-0-	2.00	3.14	-0-	-0-	5.00	7.84
Laute	.10	.16	.50	.78	-0-	-0-	5.00	7.84	-0-	-0-	-0-	-0-
Laufala	.10	.16	.50	.78	-0-	-0-	5.00	7.84	-0-	-0-	15.00	23.52
Laupaogo	.10	.16	.50	.78	-0-	-0-	5.00	7.84	-0-	-0-	10.00	15.68
Lawn	-0-	-0-	-0-	-0-	1.00	1.57	-0-	-0-	1.00	1.57	-0-	-0-
Lemon	.10	.16	2.00	3.14	-0-	-0-	20.00	31.36	-0-	-0-	-0-	-0-
Lopa	.10	.16	1.50	2.35	-0-	-0-	10.00	15.68	20.00	31.36	-0-	-0-
Mamalava	.10	.16	1.50	2.35	-0-	-0-	10.00	15.68	20.00	31.36	-0-	-0-
Mandarino	.10	.16	2.00	3.14	-0-	-0-	20.00	31.36	-0-	-0-	-0-	-0-
Mango Tree	.10	.16	2.00	3.14	-0-	-0-	10.00	15.68	-0-	-0-	10.00	15.68
Manunu Tree	.10	.16	2.00	3.14	-0-	-0-	10.00	15.68	-0-	-0-	20.00	31.36
Hilo	.10	.16	1.50	2.35	-0-	-0-	10.00	15.68	20.00	31.36	-0-	-0-
Moso'oi Tree	.10	.16	2.00	3.14	-0-	-0-	5.00	7.84	-0-	-0-	20.00	31.36
Honu Tree	.10	.16	2.00	3.14	-0-	-0-	3.00	4.70	-0-	-0-	10.00	15.68

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Crop, Plant & Tree Compensation Scheme for American Samoa
Page 3

	1977 - 1982		1977 - 1982		1977 - 1982		1977 - 1982		1977 - 1982		1977 - 1982	
O's Tree	.10	.16	2.00	3.14	-0-	-0-	10.00	15.68	-0-	-0-	10.00	15.68
Orange Tree	.10	.16	2.00	3.14	-0-	-0-	20.00	31.36	-0-	-0-	20.00	31.36
Other Plants Trees	.10	.16	2.00	3.14	-0-	-0-	5.00	7.84	-0-	-0-	10.00	15.68
Papaya Tree	.05	.08	.50	.78	-0-	-0-	2.00	3.14	-0-	-0-	-0-	-0-
Passion fruit vine	.10	.16	-0-	-0-	1.00	1.57	-0-	-0-	3.00	4.70	-0-	-0-
Pino	.15	.24	2.00	3.14	-0-	-0-	12.00	18.82	25.00	39.20	-0-	-0-
Pineapple	.10	.16	.50	.78	-0-	-0-	1.00	1.57	-0-	-0-	-0-	-0-
Pig Pen	-0-	-0-	-0-	-0-	3.00	4.70	-0-	-0-	3.00	4.70	-0-	-0-
Poumuli Tree	.20	.31	3.00	4.70	-0-	-0-	15.00	23.52	-0-	-0-	25.00	39.20
Pua Tree	.10	.16	2.00	3.14	-0-	-0-	10.00	15.68	-0-	-0-	20.00	31.36
Pulu	.05	.08	1.00	1.57	-0-	-0-	5.00	7.84	15.00	23.52	-0-	-0-
Roseapple Tree	.10	.16	2.00	3.14	-0-	-0-	10.00	15.68	-0-	-0-	-0-	-0-
Rough Lemon	.10	.16	2.00	3.14	-0-	-0-	20.00	31.36	-0-	-0-	-0-	-0-
Shower Tree	.10	.16	1.50	2.35	-0-	-0-	10.00	15.68	20.00	31.36	-0-	-0-
Soursap (Sasalapa)	.10	.16	1.00	1.57	-0-	-0-	2.00	3.14	-0-	-0-	15.00	23.52
Sugarcane (eating)	.05	.08	-0-	-0-	.25	.39	-0-	-0-	.50	.78	50.00	78.40
Sugarcane (thatch)	.05	.08	-0-	-0-	.20	.31	-0-	-0-	.25	.39	25.00	39.20
Sweet potatoes	.10	.16	-0-	-0-	.50	.78	-0-	-0-	1.00	1.57	-0-	-0-
Ta'amu	.10	.16	.20	.31	-0-	-0-	5.00	7.84	-0-	-0-	13.00	20.38
Talis Tree	.10	.16	2.00	3.14	-0-	-0-	5.00	7.84	-0-	-0-	20.00	31.36

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History: Rule 1-83, eff. 14 Feb 83.

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Tangerine	.10	.16	2.00	3.14	-0-	-0-	20.00	31.36	-0-	-0-	-0-	-0-
Tamenu	.10	.16	1.50	2.35	-0-	-0-	10.00	15.68	20.00	31.36	-0-	-0-
Taro	.10	.16	.25	.39	-0-	-0-	1.00	1.57	-0-	-0-	50.00	78.40
Taro Palagi	.10	.16	-0-	-0-	5.00	7.84	-0-	-0-	10.00	15.68	-0-	-0-
Teak	.30	.47	4.00	6.27	-0-	-0-	20.00	31.36	30.00	47.04	-0-	-0-
Ti Plant	.05	.08	.10	.16	-0-	-0-	.50	.78	-0-	-0-	-0-	-0-
Vegetables	.05	.08	.15	.24	.15	.24	.50	.78	.75	1.18	30.00	47.04
Vi Tree	.10	.16	2.00	3.14	-0-	-0-	5.00	7.84	-0-	-0-	20.00	31.36
White Ginger	.10	.16	.25	.39	-0-	-0-	.50	.78	-0-	-0-	-0-	-0-
Wild Ginger	.05	.08	.10	.16	-0-	-0-	.20	.31	-0-	-0-	-0-	-0-
Yam (Ufi)	.10	.16	-0-	-0-	5.00	7.84	-0-	-0-	10.00	15.68	32.00	50.18
Rock Fence	-0-	-0-	-0-	-0-	4.00	6.27	-0-	-0-	-0-	-0-	-0-	-0-

NOTE: 1) Please note that all of the above are cultivated except where otherwise noted. When using this list, locate the plant, the height, the useful part if present, then look down that column for the value of that plant.
2) For up-dating this list, use this formula - $(P \times R) + P$
Where P = Production cost of crop/plant from base year (in this case, 1977)
R = Inflation rate.

THIS LIST SUPERCEDES ALL PREVIOUS LISTS

REVISED BY:

[Signature]
SUSTEN, Upe
Agriculture Economist

Approved By:

[Signature]
Tatala P. Laufo
Director of Agriculture

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TITLE 37 – CHAPTER 03 – RELOCATION
POLICY FOR ASG TENANTS DISPLACED BY
ASG SPONSORED REDEVELOPMENT
PROGRAMS

Sections:

- 37.0301 Authority.
- 37.0302 Purpose.
- 37.0303 Definitions.
- 37.0304 Objectives.
- 37.0305 Basic acquisition policy-Establishment of just compensation.
- 37.0306 Steps ASG will take to minimize involuntary displacement of tenants.

37.0301 Authority.

Authority to promulgate these rules arises from 24 CER Part 42, which places the responsibility on ASG to form a local displacement policy when working on HUD redevelopment projects. Authority is also found in Chapter 1, Title 10 of the American Samoa Code Annotated.

History: Rule 19-87, eff 28 Dec 87.

37.0302 Purpose.

With some regularity the American Samoa Government sponsors redevelopment projects within the territory. As a result of these redevelopment projects, the American Samoa Government must occasionally terminate some tenants' leases. The purpose of these rules is to establish a relocation policy for tenants displaced from their leasehold as a result of these redevelopment projects.

History: Rule 19-87, eff 28 Dec 87.

37.0303 Definitions.

The words and phrases appearing in this chapter requiring definition are defined as follows:

- (a) "ASG" is the American Samoa Government.
- (b) "Displaced tenant" is any individual, partnership, corporation or association who, as a result of an ASG redevelopment project, vacates and relocates to another location.
- (c) "HUD" means Department of Housing and Urban Development, a department of the U.S.

Government which sponsors redevelopment projects.

History: Rule 19-87, eff 28 Dec 87.

37.0304 Objectives.

The following objectives shall be pursued by the redevelopment committee:

- (1) to ensure that displaced tenants with leasehold interests in real property being reclaimed for redevelopment by ASG are treated fairly and consistently, to encourage and expedite acquisition by agreements with such displaced tenants and to promote public confidence in redevelopment projects conducted by ASG;
- (2) to ensure that displaced tenants of ASG property are treated fairly, consistently, and equitably and to ensure against disproportionate injuries as a result of ASG projects designed for the benefit of the community.

History: Rule 19-87, eff 28 Dec 87.

37.0305 Basic acquisition policy-Establishment of just compensation.

Upon 90-day notice of termination, ASG will attempt to provide displaced tenants an alternative location as close as possible to the original location. If a satisfactory location cannot be found, ASG will provide the following assistance:

- (a) The last 3 months of the tenancy will be rent-free.
- (b) If the displaced tenant elects to move his business to another location, and providing the displaced tenant has no outstanding debts to ASG, ASG will reimburse actual, verifiable, moving expenses in an amount not to exceed \$500.

History: Rule 19-87, eff 28 Dec. 87.

37.0306 Steps ASG will take to minimize involuntary displacement of tenants.

The American Samoa Government will take the following steps in an effort to minimize involuntary displacement of tenants:

- (1) design projects to reduce displacement of indigenous businesses;

- (2) attempt to relocate tenants in other ASG facilities;
- (3) complete projects without undue delay to minimize tenants' temporary relocations, if there are any.

History: Rule 19-87, eff 28 Dec 87.

END OF TITLE 37 – PROPERTY

TITLE 41 – CITIZENSHIP, ALIENAGE AND IMMIGRATION

Chapters:

- 02 General Provisions
- 03 Immigration Board of American Samoa
- 04 Immigration Rules
- 05 Control of Aliens Departing from American Samoa; Manifests: Inspections
- 06 Exclusion of Aliens
- 07 Deportation of Excluded Aliens-
- 08 Proceeding to Determine Deportation of Alien in American Samoa-Apprehension, Custody, Hearing, and Appeal. 09 (Reserved)
- 10 Adjustment of Status to That of Persons Admitted for Permanent Residence-Employment-Becoming an American Samoa.

Editor’s Note: The prior chapters of this title were derived from immigration regulations effective prior to 1975 as amended by Rule 10-75, effective January 5, 1976, Rule 2-76, effective March 10, 1976 and Rule 7-83, effective May 23, 1983. The Attorney General is of the opinion that the provisions of Rule 3-86, codified in this title, repeal prior Title 41 by implication.

Editor’s Update: April 25, 2022 – copies of APA compliant immigration amendments promulgated in 2003 and 2010 were recovered. These rules were therefore revised accordingly.

TITLE 41 – CHAPTER 02 – GENERAL PROVISIONS

Sections:

- 41.0201 Definitions.
- 41.0203 Interpreter.

41.0201 Definitions.

As used in this title:

- (a) The terms defined in 41.0202 A.S.C.A., shall have the meanings ascribed to them in that section and as supplemented, explained, and further defined in this chapter.
- (b) “Act” means the immigration act, as amended.
- (c) “Office” means the immigration office.

- (d) “Chief Immigration Officer” means the chief immigration officer of the immigration office.
- (e) “Board” means the immigration board.
- (f) “Attorney General” means the Attorney General of American Samoa.
- (g) “Attorney” means any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia, and is not under any order to any court suspending, enjoining, restraining, disbaring, or otherwise restricting him/her in the practice of law.
- (h) Unless the context otherwise requires, “case” means any proceeding arising under any immigration law of American Samoa, Executive Order, or preparation for or incident to such proceeding, including preliminary steps by any private person or corporation preliminary to the filing of the application or petition by which any proceeding under the jurisdiction of the office or the board is initiated.
- (i) “Day” when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays and legal holidays, except when the last day of the period so computed falls on a Saturday, Sunday or legal holiday, the period shall run until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.
- (j) “Practice” means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the office, or any officer of the office, or the board.
- (k) “Representative” refers to a person who is entitled to represent others as provided in 41.0307 of this chapter.
- (l) “Preparation”, constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental

preparation of papers, but does not include the lawful function of a notary public or services consisting solely of assistance in the completion of blank spaces on printed office forms by one whose remuneration, if any, is nominal and who does not hold himself or herself out as qualified in legal matters or in immigration procedures.

- (m) “Representation” before the board and the office includes practice and preparation as defined in paragraphs (j) and (i) of this section.

History: Rule 3-86, eff 7 Dec 86.

41.0203 Interpreter.

Any person acting as interpreter in a hearing before the board shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the Attorney General or the High Court, in which event no such oath shall be required.

History: Rule 3-86, eff Dec. 86.

TITLE 41 – CHAPTER 03 – IMMIGRATION BOARD OF AMERICAN SAMOA

Sections:

- 41.0301 Authority.
- 41.0302 Delegation.
- 4 1.0303 Appellate jurisdiction.
- 41.0304 Original jurisdiction.
- 41.0305 Summary dismissal of appeals.
- 41.0306 Finality of decisions.
- 41.0307 Rules of practice.
- 41.0308 Oral argument.
- 41.0309 Service of board decision.
- 41.0310 Decision of the board as precedent.
- 41.0311 Referral of cases to the Attorney General.
- 41.0312 Reopening or reconsideration.
- 41.0313 Notice of appeal.
- 41.0314 Withdrawal of appeal.
- 41.0315 Meetings and hearings.
- 41.0316 Election of chairperson.
- 41.0317 Attendance.
- 41.0318 Denials and appeals.
- 41.0319 Fees.
- 41.0320 Access by individuals to records maintained about them.
- 41.0321 Records exempt in whole or in part.
- 41.0322 Fees for copies of records.

- 41.0323 Appeals from denials of access.
- 41.0324 Request for correction of records.
- 41.0325 Records not subject to correction.
- 41.0326 Students.
- 41.0327 Business license.
- 41.0328 Ministers and missionary workers.
- 41.0329 Divorced spouses.
- 41.0330 Adoptions.
- 41.0331 Permanent residents.

41.0301 Authority.

The immigration board of American Samoa has its authority from 41.0203 to. 41.0205 A.S.C.A. The members of the board shall elect one of its members as chairman annually in March. Rules created by the board are made pursuant to authority granted at 41.0205 (7), (8), (9), (11) and (12) A.S.C.A., and other sections of the Act as noted below. The board hereby delegates to the Attorney General the authority to investigate any matter pertaining to enforcement of the Act. 41.0205 (4) A.S.C.A.

History: Rule 3-86, eff 7 Dec 86.

41.0302 Delegation.

The board hereby delegates all of its administrative duties to the Attorney General and such immigration officers of American Samoa as he/she deems necessary.

History: Rule 3-86, eff 7 Dec 86.

41.0303 Appellate jurisdiction.

An appeal shall lie to the board from the following:

- (1) a decision by the Attorney General or his designee in exclusion cases;
- (2) a decision by the Attorney General or his designee in deportation cases, except that no appeal shall lie from an order of the Attorney General or his designee granting voluntary departure within a period of at least 10 days, if the sole grant of appeal is that a greater period of departure time should have been fixed;
- (3) a decision on application for entrance to American Samoa under numerical limitation contained in 41.0301 and 41.0303 A.S.C.A.;

- (4) a determination relating to bond, parole or detentions of an alien;
- (5) a decision relating to adjustment of status cases;
- (6) a decision by the Attorney General or his designee concerning sponsorship and employment of aliens pursuant to 41.0408, 41.0410 and 41.0902 A.S.C.A.;
- (7) an application by a person born outside of the American Samoa one of whose parents was born in American Samoa of Samoan ancestry pursuant to 41.0202(1)(c)(ii) A.S.C.A.;
- (8) a decision by the Attorney General on an application by a person other than an American Samoan desiring permanent resident status pursuant to 41.0404 A.S.C.A.;
- (9) a decision by the Attorney General regarding an application by a permanent resident other than an American Samoan to reside outside of American Samoa in excess of 6 months;
- (10) a decision by the Attorney General on whether a permanent resident other than an American Samoan is to lose his/her status as a permanent resident pursuant to 41.0405 A.S.C.A.

History: Rule 3-86. eff 7 Dec 86.; amd 2010, eff 3 May 2010.

Amendments: 2010, subsections (1),(2), and (6) – deleted “his/her delegate,” added “designee;” subsection (5) deleted “of”, added “relating to;” subsection (6) – deleted “and 41.0409,” added “41.0410 and 41.0902; ” subsections (7),(8),(9) and (10) – new subsections added as indicated above.

41.0304 Original jurisdiction.

The board shall have original jurisdiction in the following matters:

- (1) an application by certain adopted children pursuant to 41.0406(b) A.S.C.A.;
- (2) conducting hearings on petition of the Attorney General or his delegate against an employer allegedly employing an alien illegally or against an alien allegedly employed illegally pursuant to 41.0409(c) A.S.C.A.
- (3) deportation hearings;

- (4) application to enter and remain in a professional, skill and unskilled labor (P45);
- (5) application by a partnership or corporation, licensed to do business in American Samoa, to sponsor an alien for employment or other purpose pursuant to 41.0301(d).

History: Rule 3-46, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, subsections (1), (2), (3), and (4) deleted; subsection (5) and (6) renumbered (1) and (2); subsections (3), (4) and (5) added (see current language).,

41.0305 Summary dismissal of appeals.

Notwithstanding the provisions of 41.0308 of this chapter, the board may deny oral argument concerning, and summarily dismiss any appeal in any deportation or exclusion proceeding in any case in which:

- (1) the party concerned fails to specify the reason for the appeal;
- (2) the only reason specified by the party concerned for his/her appeal involves a finding of fact or a conclusion of law which was conceded by the party at the hearing;
- (3) the appeal is from an order that granted the party concerned the relief which he requested; or
- (4) the board is satisfied from a view of the record that the appeal is frivolous filed solely for purpose of delay.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, subsection (3) added “or.”

41.0306 Finality of decisions.

The decisions of the board shall be final except in those cases that the board may return a case to the Attorney General for such action as may be appropriate without entering a final decision on the merits of the case.

History: Rule 3-86, eff 7 Dec 86.

41.0307 Rules of practice.

- (a) The board hereby permits attorneys admitted to the High Court of American Samoa to appear before it. Law students, law graduates, legal practitioners and reputable individuals of good

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moral character may appear on an individual case basis at the request of the person entitled to representation, if he/she is appearing without direct or indirect remuneration and files a written declaration to that effect and if the board approves his/her appearance.

(b) The following shall be grounds for not permitting attorneys and others to appear before the board, although the following categories do not establish the exclusive grounds for suspension or disbarment in the public interest:

- (1) any attorney who has been disbarred or under an order of suspension of the highest court of any state, possession, territory, commonwealth, or the District of Columbia or in any other way is restricted in the practice of law; and any person
- (2) who, with intent to defraud or deceive, bribes, attempts to bribe, coerces, or attempts to coerce, by any means whatsoever, any person, including a party to a case, or an officer or employee of the Office of the Attorney General or the board, to commit an act or to refrain from performing an act in connection with any case;
- (3) who wilfully misleads, misinforms, or deceives an officer or an employee of the Office of the Attorney General or the board concerning any material and relevant fact in connection with a case;
- (4) who wilfully deceives) misleads or threatens any party to a case concerning any matter relating to the case;
- (5) who solicits practice in any unethical or unprofessional manner including, but not limited to, the use of runners, or advertising his/her availability to handle immigration matters;
- (6) who represents, as an associate, any person who, known to him/her, solicits practice in any ethical or unprofessional manner, including but not limited to, the use of runners, or advertising his/her availability to handle immigration matters;

- (7) who, by use of name, personal appearance, or any device, aids and abets any person to practice during the period of his/her suspension or disbarment, such suspension or disbarment being known to him/her;
- (8) who wilfully make false and material statements or representations with respect to his/her qualifications or authority to represent others in any case;
- (9) who charges or receives either directly or indirectly, any fee or compensation for services which may be deemed to be grossly excessive in relation to the services performed, or any non-attorney who charges or receives either directly or indirectly any fee or compensation for services rendered to any person, except that an accredited representative of an organization may be regularly compensated by the organization of which he/she is an accredited representative;
- (10) who engages in contumelious or otherwise obnoxious conduct with respect to a case in which he/she acts in a representative capacity, which in the opinion of the board would constitute cause for suspension or disbarment if the case pending before a court, or which, in such a judicial proceeding would constitute a contempt of court;
- (11) who, having been furnished with a copy of any portion of the record in a case, wilfully fails to surrender such copy upon final disposition of the case or upon demand, or wilfully and without authorization makes and retains a copy of the material furnished;
- (12) who has been convicted of a felony or, having been convicted of any crime is sentenced to imprisonment for a term of more than one year;
- (13) who has falsely certified a copy of the document as being a true and complete copy of an original.

History: Rule 3-86, eff 7 Dec 86.

41.0308 Oral argument.

Oral argument shall be heard by the board upon request, in any case over which the board acquires jurisdiction by appeal as provided in these rules. If an appeal has been taken, request for oral argument, if desired, shall be included in the notice of appeal. The board shall have the authority to fix any date or change any date upon which oral argument is to be heard. The Attorney General or the immigration office may be represented in argument before the board by an officer of the Attorney General or the immigration office.

History: Rule 3-86, eff 7 Dec 86.

41.0309 Service of board decision.

The decision of the board shall be in writing and copies thereof shall be transmitted by the board to the immigration office, the Attorney General, and a copy shall be served upon the alien or party affected by the decision and the legal representative of the alien or party affected.

History: Rule 3-86, eff 7 Dec 86.

41.0310 Decision of the board as precedent.

Accept as may be modified or overruled by the board or a court, decisions of the board shall be binding on the immigration office in the administration of the Act, and selected decisions designated by the board shall serve as precedents in all proceedings involving the same issue or issues.

History: Rule 3-86, eff 7 Dec 86.

41.0311 Referral of cases to the Attorney General.

- (a) The board shall refer to the Attorney General for review of its decision all cases which:
- (1) the Attorney General directs the board to refer to him/her;
 - (2) the chair or the majority of the board believes should be referred to the Attorney General for review.
- (b) In any case which the Attorney General reviews the decision of the board, the decision of the Attorney General shall be stated in writing and shall be transmitted to the board for transmittal and service as provided in 41.0309 of this chapter.

History: Rule 3-86, eff 7 Dec 86.

41.0312 Reopening or reconsideration.

The board may on its own motion reopen or office, or by the party affected by the decision, shall be only upon written motion to the board. Motions to reopen in deportation proceedings shall not be granted unless it appears to the board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the formal hearing; nor shall any motion to reopen for the purpose of affording the alien an opportunity reconsider any case in which it has rendered a decision. Reopening or reconsideration of any case in which a decision has been made by the board, whether requested by the Attorney General or any other duly authorized officer of the Attorney General's to apply for any form of discretionary relief be granted if it appears that the alien's right to apply for such relief was fully explained to him or her and an opportunity to apply therefor was afforded him or her at the formal hearing unless relief is sought on the basis of circumstances which has arisen subsequent to the hearing. A motion to reopen or a motion to reconsider shall not be made by or in behalf of a person who is a subject of deportation proceedings subsequent to his departure from American Samoa. Any departure from American Samoa of a person who is the subject of deportation proceedings occurring after the making of the motion to reopen or a motion to reconsider shall constitute a withdrawal of such motion.

History: Rule 3-86, eff 7 Dec 86.

41.0313 Notice of appeal:

- (a) A party affected by a decision who is entitled under this chapter to appeal to the board shall be given notice of his/her right to appeal. An appeal shall be taken by filing notice of appeal with the immigration office within the time specified in the governing sections of this chapter. Certification of a case as provided in this rule shall not relieve the party affected from compliance with provision of this section in the event that he/she is entitled, and desires, to appeal from an initial decision, nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal. Departure from American Samoa of a person under deportation proceedings prior to the taking

of an appeal from a decision in his/her case shall constitute a waiver of his/her right to appeal.

- (b) Fees. Except as otherwise provided in this section, a notice of appeal or a motion filed under this rule by any person other than the Attorney General or the immigration office shall be accompanied by the appropriate fee specified by and remitted, in accordance with, the provisions of 41.0319 of this chapter. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or a motion, he/she shall file with a notice of appeal or the motion his/her affidavit stating the nature of the motion or appeal, the belief that he/she is entitled to redress, and his/her ability to pay the required fee, and shall request permission to prosecute the appeal or motion without prepayment of such fee. When such an affidavit is riled with the immigration office an officer shall, if he/she believes that the appeal or motion is not taken or made in good faith, certify in writing his/her reasons for such belief for consideration. The board may, in its discretion, authorize the prosecution of any appeal or motion without prepayment of fee.
- (c) Briefs. Briefs in support of or in opposition to an appeal shall be filed in with the office within the time fixed for an appeal or within any other additional period designated by the board. The board for good cause may extend the time for filing a brief or reply brief. The board in its discretion may authorize the filing of a brief directly with it in which event the opposing party shall be allowed a specified time to respond.

History: Rule 3-86, eff 7 Dec 86.

41.0314 Withdrawal of appeal.

In any, case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the office. The withdrawal of an appeal shall result in the initial decision being final to the same extent as though no appeal had been taken. Departure from American Samoa of the person who is the subject to deportation proceedings subsequent to taking of an appeal but prior to a decision thereon shall constitute a withdrawal of the appeal and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

History: Rule 3-86, eff 7 Dec 86.

41.0315 Meetings and hearings.

All regular meetings and hearings of the board shall be held in the immigration office unless otherwise announced each Friday as needed at 9:00 a.m. Such other meetings and hearings as are necessary for the efficient conduct of its business may be held at such times and p laces as determined by the chair.

History: Rule 3-86, eff 7 Dec 86.

41.0316 Election of chairperson.

A chairperson shall be elected by the board on the first Friday of March each year.

History: Rule 3-86,eff 7 Dec 86.

41.0317 Attendance.

The board shall recommend to the Governor the need for a replacement for any member who misses 3 consecutive meetings without cause. Cause shall include health and off-island business trips.

History: Rule 3-86, eff 7 Dec 86.

41.0318 Denials and appeals.

(a) Denials and Appeals. Whenever a formal application or petition filed with the office is denied, the applicant shall be given written notice setting forth the specific reasons for such denial. When the applicant so desires, such an appeal to the board may be taken within 15 days after the service of notification of decision accompanied by a supporting brief if desired and any fee established for filing the notice of appeal which shall be furnished with the written notice. For good cause shown, the time within which the brief may be submitted may be extended. The party taking the appeal may, prior to appearing before the board, rile a written withdrawal of such appeal. An appeal, cross appeal, answer thereto and accompanying brief, if any, shall become part of the record of proceeding and, if riled by an officer of the office, a copy shall be served on the party affected.

(b) Dismissal of Appeals. Notwithstanding the provisions of subsection (c) of this section, the board may deny oral argument and dismiss any appeal when (1) the party concerned fails to

specify the reasons for his/her appeal, or (2) the appeal is patently frivolous.

- (c) Oral Argument. if an appeal is taken, request for oral argument, if desired, shall be included in a notice of appeal. The board shall have the authority to designate the time, date and place where oral argument may be heard.

History: Rule 3-86, eff 7 Dec 86.

41.0319 Fees.

- (a) Remittances. Fees shall be submitted with any formal application or petition prescribed in this chapter and shall be in the amount prescribed by law or rule. When any discretionary relief in exclusion or deportation proceedings is granted absent an application and fee therefor, the chief immigration officer shall require the filing of the application and the payment of the fee. Every remittance shall be accepted subject to collection. A charge of \$25.00 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 an officer for any such remittance shall not be binding if a remittance if found uncollectible. Remittances must be drawn on a bank or other institution located in American Samoa or the United States and be payable in United States currency. Fees in a form of postage stamps shall not be accepted. Remittance shall be made payable to the “Treasurer-American Samoa Government.” If application is submitted from outside American Samoa and the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in American Samoa or in the United States and payable to “Treasurer-American Samoa Government” in United States currency.

- (b) Amounts of fees. The following fees and charges are prescribed:
 - (1) the fee for a case of original jurisdiction before the board shall be \$20.00 unless otherwise provided below;
 - (2) the fee for an appeal to the board shall be \$50.00;

- (3) a fee of \$75.00 shall be charged for the following applications: permanent residency, all priorities under 41.0301 and 41.0303 A.S.C.A. and temporary or seasonal workers; and

- (4) a fee of \$35.00 shall be charged for the following application: a lost, stolen, destroyed, mutilated registration receipt card, a new registration receipt card for a name change; and application for extension of time to remain under numerical limitations.

- (c) Waiver of Fees. Except as otherwise provided in this subsection and in 41.0313 of this chapter, any of the fees prescribed in subsection (b) of this section relating to applications, petitions, appeals, motions, or requests may be waived in any case in which the alien or other party affected is unable to pay the prescribed fee if he/she files his/her affidavit asking for permission to prosecute without payment of fee, the application, petition, appeal, motion or request, and stating his/her belief that he/she is entitled to or deserving of the benefit and the reasons for the inability to pay. The chief immigration officer or the board may, in its discretion, grant the waiver of fee.

History: Rule 3-86, eff 7 Dec 86; amd 2003, eff 1 Apr 2003.

Amendments: 2003, subsection (a) – deleted “10.00;” added “25.00;” subsection (b)(1) – deleted “10.00;” added “20.00;” subsection (b)(2) – deleted “25.00;” added “50.00;” subsection (b)(3) – deleted “50.00;” added “75.00;” added “and temporary or seasonal workers;” subsection (b)(4) – deleted “25.00;” added “35.00;” deleted “temporary or seasonal workers.”

41.0320 Access by individuals to records maintained about them.

- (a) Access to Available Records. An individual seeking records about him/herself shall present the request in person or in writing to the chief immigration officer. The person requesting information shall to the extent possible assist in identifying the request as precisely as possible to insure expeditious handling and rapid identification.
- (b) Verification of Identity. The following standards are applicable to any individual who requests

records concerning him/herself unless other provisions for identity verification are specified in the published notice pertaining to the particular system of records:

- (1) An individual seeking access to records about him/herself in person shall establish identity by the presentation of a single document bearing a photograph (such as a passport, alien registration receipt card or identification) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license, or credit card).
 - (2) An individual seeking access to records about him/herself by mail shall establish identity by a signature, address, date of birth, place of birth, alien or employee identification, if any and one other identifier such as a photocopy of an identifying document.
 - (3) An individual seeking access to records about him/herself by mail or in person who cannot provide the necessary documentation of identification may provide a notarized statement swearing or affirming to his/her identity and to the fact that he/she understands the penalty for false statement pursuant to 41.0701 A.S.C.A. See also 41.0702, 41.0703, 41.0704 and 41.0313 A.S.C.A.
- (c) Verification of Guardianship. The parent or guardian of a child or of a person judicially determined to be incompetent and seeking to act on behalf of such child or incompetent, shall, in addition to establishing his/her own identity, establish the identity of the child or other person he/she represents as required in subsection (b) of this section, and establish his/her own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing a guardianship.
- (d) Accompanying Persons. An individual seeking to review records pertaining to him/herself may be accompanied by another individual of his/her

own choosing. Both the individual seeking access and the individual accompanying him/her shall be required to sign a form indicating that the office is authorized to discuss the contents of the subject record in the presence of both individuals.

- (e) Specification of Records Sought. Request for access to records, either in person or by mail shall describe the nature of the records sought, the approximate dates covered by the record, and the identity of any individual or officers who may have had contact with this record.

History: Rule 3-86, eff 7 Dec 86.

41.0321 Records exempt in whole or in part.

- (a) When an individual requests records about him/herself which have been exempted from individual access or which have been compiled in reasonable anticipation of a civil action or proceeding either in a court or before an administrative tribunal, the office will neither confirm nor deny the existence of the record which is presently available to him/her.
- (b) Individual requests for access to records which have been exempted from access shall be processed as follows:
 - (1) Requests for information classified by the office shall be reviewed by the office to determine whether it continues to warrant classification. Information which no longer warrants classification under criteria shall be declassified and made available to the individual, if not otherwise exempt. If the information continues to warrant classification, the individual shall be advised that the information sought is classified; that it has been reviewed and continue to warrant classification; and that it has been exempted from access. Information which has been exempted and which is also classified shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by subsection (a) of this section.
 - (2) Requests for information which have been exempted from disclosure shall be responded to in the manner provided in

subsection (a) of this section unless a review of the information indicates that the information has been used or is being used to deny the individual any right, privilege or benefit for which he/she is eligible or to which he/she would otherwise be eligible under American Samoa law. In that event, the individual shall be advised of the existence of the record and shall be provided the information except to the extent it would identify a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requestor.

- (3) Information compiled as part of an employee background investigation shall be made available to an individual upon request except to the extent that it identifies a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletion made or the summary shall be furnished to the requestor.
- (4) Testing or examination materials which have been exempted shall not be made available to an individual if disclosures would compromise the objectivity or fairness of the testing or examination process but shall be made available if no such compromise possibility exists.

History: Rule 3-86, eff 7 Dec 86.

41.0322 Fees for copies of records.

The fees charged by the office of the Attorney General and the immigration office for records pursuant to this chapter shall be \$.75 per page. See 41.0404(b) for an exception for certain statements.

History: Rule 3-86, eff 7 Dec 86.

41.0323 Appeals from denials of access.

An individual who has been denied access by the office to the records concerning him/her may appeal that decision to the board in accordance with procedures in this chapter.

History: Rule 3-86, eff 7 Dec 86.

41.0324 Request for correction of records.

- (a) How made. Unless a record is exempt from corrections, an individual may request amendment or correction of a record concerning him/her by addressing his/her request to the chief immigration officer either in person or by mail, his/her identity to be established as provided in 41.0320(b) of this chapter. The request must indicate the particular record involved, the nature of the correction sought, and the justification for the correction or amendment. Requests made by mail should be addressed to the chief immigration officer and shall be clearly marked on the request and on the envelope "Privacy Correction Request".
- (b) Initial Determination. Within 15 working days of the receipt of the request, the office shall advise the individual that his/her record request has been received. If a record is to be amended or corrected, the office may so advise the individual but if correction is refused in whole or in part, it must be done by the chief immigration officer or a supervisor. If a correction is to be made, the individual shall be advised of his/her right to obtain a copy of the corrected record upon payment of the standard fee as established in 41.0322 of this chapter. If a correction or amendment is refused, in whole or in part, the individual shall be so advised, shall be given reasons for the refusal, and shall be advised of his/her right to appeal to the board in accordance with procedures set forth in this chapter.
- (c) Notice of Correction or Disagreement. When a record has been corrected, the chief immigration officer shall, within 30 working days thereof, advise all prior recipients of the records whose identities can be determined pursuant to an accounting of the correction. Any dissemination of a record after the filing of a statement of disagreement shall be accompanied by a copy of that statement. Any statement of the office

giving reasons for refusing to correct shall be included in the file.

History: Rule 3-86, eff 7 Dec 86.

41.0325 *Records not subject to correction.*

The following records are not subject to correction or amendment by individuals:

- (a) Transcript or written statement made under oath;
- (b) Transcripts of the immigration board, judicial or quasi-judicial proceedings which form the official record of those proceedings; and
- (c) Presentence reports comprising the property of the court but maintained in office files.

History: Rule 3-86, eff 7 Dec 86.

41.0326 *Students.*

It is the policy of the board not to allow aliens to attend the public school system, or the Community College of American Samoa or private schools and colleges or seminaries if their parents are not living in American Samoa, except as set forth in this section, and provided the alien is otherwise admissible:

- (a) An alien may be allowed to enter and remain in American Samoa to attend any school if the alien is participating in an official exchange agreement between the American Samoa Government and the student's home country.
- (b) On a case by case basis the board will review alien applicants to attend any school factors that will be considered, but not limited to, are the sponsoring family in American Samoa who will be responsible while the alien is here, school records, police and health records from the alien's home country, availability of room in the school or college for the alien, and parental or legal guardian written consent.
- (c) Any alien authorized to enter and remain in American Samoa pursuant to subsections (a) and (b) of this section who does not attend the school regularly or engages in any employment without written approval of the board may be subject to immediate deportation.
- (d) Alien students and the sponsors approved under this section shall file copies of report cards and

attendance records with the office quarterly. Failure to provide such records could result in immediate deportation of the alien. A bond and airfare are required on all students.

History: Rule 3-86, eff 7 Dec 86.

41.0327 *Business license.*

It is the policy of the board that all business licenses submitted by aliens are to be reviewed by the board. There shall be no fee for this review. It is the policy of the board not to approve aliens for sole proprietorships for a business license. Aliens may be partners or founders or stockholders in partnerships or corporations pursuant to Title 30 A.S.C.A.

History: Rule 3-86, eff 1 Dec 86.

41.0328 *Ministers and missionary workers.*

- (a) The board finds ministers and missionary workers, as defined in this subsection, as a group of individuals whose assignment to and work in American Samoa constitute extenuating circumstances and for whom the numerical limitations as to their registration are hereby waived pursuant to A.S.C.A. 41.0301(d). The Attorney General or his designee is delegated the authority and responsibility to grant entry and oversee the orderly processing of ministers and missionary workers of the community.
- (b) "Minister", as used in this section, means a person duly authorized by a recognized religious denomination having a bona fide organization in American Samoa to conduct religious worship and to perform other duties usually performed by a regular ordained pastor or clergyman of such denomination. The term shall also apply to persons duly authorized by an interdenominational organization designed to assist the various religions.
- (c) An alien shall be allowed to enter and remain as a minister in American Samoa; provided, that:
 - (1) he/she is entering solely for the purpose of carrying on the vocation of minister of a religious denomination;
 - (2) his/her services are needed by such religious denomination having a bona fide organization in American Samoa or his/her

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services are needed by an interdenominational religious organization; and

- (3) his/her services are requested by the religious organization in American Samoa.
- (d) “Missionary worker”, as used in this section, encompasses all individuals performing religious work in American Samoa not included within the definition of “minister” as set forth in subsection (a) of this section.
- (e) An alien missionary worker shall be allowed to enter and remain in American Samoa, provided that:
 - (1) it is established to the satisfaction of the immigration board that there are not American Samoans available to perform the type of missionary work to be done by the person requested;
 - (2) he/she is entering solely for the purpose of carrying on religious work for the organization;
 - (3) his/her services are needed by such religious denomination having a bona fide organization in American Samoa or his/her services are needed by an interdenominational religious organization; and
 - (4) his/her services are requested by the religious organization in American Samoa.
- (f) If the individual ceases to perform the missionary or ministerial services contemplated in the original approval by the Attorney General or his designee, he/she must depart American Samoa within 20 days or shall be subject to the numerical limitations within 30 days.
- (g) Requests for “ministers” or “missionary” workers shall be filed on form P45 if the stay is for more than one year and on form P50 if the stay is for one year or less. Fees may be (waived upon request and with showing of hardship.

History: Rule 3-86 eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, subsection (a) - renumbered (b); subsection (a) - added with new language; subsection

(b) - renumbered (c); subsection (c) - renumbered (d); subsection (d) - renumbered (e); subsection (e)(1) - “immigration board” deleted, amended “Attorney General or his designee;” subsection (e) - renumbered (f); subsection (f) - deleted “immigration board” added “Attorney General or his designee,” added “within 20 days or shall be subject to the numerical limitations within 30 days;” subsection (f) - renumbered (g).

41.0329 Divorced spouses.

Any alien who has entered or remained in American Samoa as a spouse of an American Samoan, United States National or an alien approved for employment who becomes divorced shall be subject to having his/her right to remain revoked unless good and sufficient cause exists for allowing the person to remain. In determining good and sufficient cause, the board will consider but not be limited to:

- (a) Length of stay in American Samoa;
- (b) Employment or ability to care for oneself and family;
- (c) Housing arrangements;
- (d) Hardship;
- (e) Children;
- (f) Police and health records; and
- (g) Sponsorship, and posting of a bond and one-way air fare for all affected person, and valid passports or travel documents.

History: Rule 3-86. eff 7 Dec 86.

41.0330 Adoptions.

For the purposes of 41.0403 (2) and 41.0406 A.S.C.A., it is the policy of the board to accept only adoptions that granted by a court of law in the United States or its territories and possessions, or adoptions accepted by the Courts of American Samoa.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, added (2); deleted “that occur,” added “granted by a court of law”; added “or.”

Editor’s Note: 2010, Proposed change to language to include adoptions granted by courts in the Independent State of Samoa was disregarded and formally withdrawn by Attorney General via promulgating memorandum.

41.0331 Permanent residents.

Upon application for an alien to become a permanent resident, the alien and the sponsor must appear before the board. Failure of the sponsor to appear will result in denial or delay.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, deleted “board,” added “Attorney General or his designee;” added “If permanent resident status is granted, a bond must still be posted for the alien.”

TITLE 41 – CHAPTER 04 – IMMIGRATION RULES

Sections:

- 41.0401 Introduction.
- 41.0402 Organization and delegation.
- 41.0403 Places where and method whereby information may be secured or submittals for request made.
- 41.0404 Application, petition, and other documents.
- 41.0405 Denial and appeals.
- 41.0406 Working hours.
- 41.0407 Forms.
- 41.0408 Instruction to forms.
- 41.0409 Bonds.

41.0401 Introduction.

The following sections describe the organization of the immigration office including statements of delegations of authority indicate the established places at which, and method whereby, the public may secure information, and direct attention to the rules leading to the general course and method by which its functions are channeled and determined. These sections also set forth the procedure governing the availability of opinions, orders and records.

History: Rule 3-86. eff 7 Dec 86.

41.0402 Organization and delegation.

The Attorney General has delegated to the chief immigration officer without divesting of the Attorney General any of the powers, privileges, and duties, authority to direct the administration of the immigration office, and to enforce the Act, and all other laws relating to immigration. From time to time

other persons within the office of the Attorney General such as the Deputy Attorney General or an assistant attorney general may have delegated to him or her authorization to exercise certain powers and authority on behalf of the beyond which vessel owners will be required to pay overtime as 7:00 a.m. to 5:00 p.m., Monday through Friday, excepting holidays.

History: Rule 3-86, eff 7 Dec 86.

41.0403 Places where and method whereby information may be secured or submittals for request made

Any person desiring information relative to a matter handled by the office or any person desiring to make a submittal or request in connection to such matter should communicate either orally or in writing with the office. When the submittal or request consists of a formal application for one of the documents, privileges, or other benefits provided for in the laws administered by the office or the rules implementing those laws, the instructions on the form as to preparation and place of submission should be followed.

History: Rule 3-86, eff 7 Dec 86.

41.0404 Application, petition, and other documents

- (a) General. Every application, petition, or other document submitted on the forms prescribed by this chapter shall be executed and filed in accordance with the instructions contained on the form, such instructions being hereby incorporated into the particular section of the rules requiring its submission. The native form of a name may also be required if such a document has been executed in an anglicized version thereof. A parent, guardian or other adult having a legitimate interest in a person who is under 14 years of age may file on such a person’s behalf; a guardian of a mentally incompetent person may file on such a person’s behalf. Any required oath may be administered by an immigration officer or person generally authorized to administer oaths.

Applications or petitions received in the office or the office of the Attorney General relative to immigration matters shall be stamped to show

the time and date of actual receipt and shall be regarded as filed when stamped unless they are returned because they are improperly executed or for other reasons cannot continue to be accepted.

- (b) Evidence. Each application or petition shall be accompanied by the documents required by the particular section of the rule under which submitted. All accompanying documents must be submitted in the original and will not be returned unless accompanied by a copy. Except as otherwise provided a copy accompanied by an original will be accepted only if the accuracy of the copy has been certified by an immigration officer who has examined the original. A foreign document must be accompanied by an English translation in accordance with the instructions on the application or petition form. A translator must certify that he/ she is competent to translate and that the translation is accurate. If any required documents are unavailable, church or school records, or other evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The immigration office may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. The office may also require the submission of additional evidence, including blood tests, may require the taking of testimony, and may direct the making of any necessary investigation. When any statement is taken from a person and that statement is signed by him/her, he/she shall be furnished a copy thereof, on request, without fee. Any allegations made in addition to, or in substitution for, those originally made shall be under oath and filed in the same manner as the original application, petition, or other document or noted on the original application, petition, or the document and acknowledged under oath thereon. The status of an applicant or petitioner who claims that he/she is lawfully present in American Samoa will be verified from official records of the immigration office. Under the conditions hereinafter prescribed, the term “official records” as used herein includes files of the Office of the Attorney General and the immigration office, arrival manifests, arrival

records, office index cards, forms, files, passports, and reentry permits.

- (c) Inspection of Evidence. An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as hereinafter provided. If the decision will be adverse to the applicant or petitioner on the basis of derogatory evidence considered by the office and of which the applicant or petitioner is unaware, he/she shall be advised thereof and offered an opportunity to rebut it and present evidence in his/her behalf before a decision is rendered, except that classified evidence shall not be made available. Any explanation, rebuttal, or evidence presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding. A determination of statutory ineligibility shall not be valid unless based on evidence contained in the record of proceeding. In exercising discretionary power when considering an application or petition, the immigration officer, in any case in which he/she is authorized to make the decision, may consider and base the decision on information not contained in the record not made available for inspection by the applicant or petitioner; provided, that the Attorney General has determined that such information is relevant and is classified. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the Attorney General should direct that the applicant or petitioner be given notice of the general nature of the information and the opportunity to offer opposing evidence. The Attorney General’s authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decisions.

History: Rule 3-86, eff 7 Dec 86.

41.0405 Denial and appeals

Whenever a formal application or petition is denied, the applicant shall be given notice setting forth the reasons for such denial in writing. Any decision of the immigration office is appealable to the immigration

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board. Such appeal may be taken within 15 days after the service of notification of the decision.

History: Rule 3-86. eff 7 Dec 86.

41.0406 Working Hours

Pursuant to 41.0505 ASCA the Attorney General establishes the normal working hours beyond which vessel and aircraft owners will be required to pay overtime as 7: 00 a.m. to 5: 00 p.m. Monday through Friday, excepting holidays.

History: Rule 3-86. eff 7 Dec 86; amd 2010, eff 5 May 2010.

Amendments: 2010, added “and aircraft,” deleted “5:00” added “4:00.”

41.0407 Forms.

The Attorney General and the immigration board hereby approve the following forms and instructions, including those that are relative to numerical limitations and quotas as established at 41.0301 and 41.0303 A.S.C.A.:

Petition to Classify Preference Status of Alien on Basis of Profession or Occupation

Petition to Classify Preference Status of Alien on Basis of Profession or Occupation	P45
Instructions	P45 I
Petition to Classify Preference Status of Alien on Basis of Relations or Humanitarian Reasons	P12
Instructions	P12 I
Petition for Temporary or Season Worker	P50
Instructions	P50 I
Denial for Preference Status	P100
Authorization to Remain in American Samoaq	P101
Application for Receipt Card	P200
Application for Extension of Time to Remin Under Numerial Limitations	P300
Notice of Address or Change of Address	P400
Application fo Extension of 30 Days Entry Permit	IO 101
Complaint Report	IO 102
Warnings as to Rights	IO 201
Record of Sworn Statement -Affidavit of Witness	IO 202
Record of Sworn Statement	IO 203
Notice of Request for Disposition	IO 301
Notice of Violation	IO 302
Waiver of Rights	IO 303
Order Requiring Cash Bond	IO 304
Release of Immigrtion Prisoner	IO 305
Order or Release on Recognizance	IO 306
Notice of Revocation of Bond or Parole	IO 307

Record of Deportable Aliens	IO 308
Notice of Detain, Deport, Remove or Present Aliens	TL 101
Notice to Transportation Line Regarding Deportation and Detention Expenses of Detained Aliens	TL 102
Notice to Transportation Line Regarding Deportation Expenses	TL 103
Clearance Prior to Deporting Alien from American Samoa	TL 104
Application for Permanent Residence	IB 101
Instructions	IB 101 I
Order Granting Permanent Resident Status	IB 102
Application for Becoming an American Samoan	IB 103
Instructions	IB 102 I
Application for Students	IB 104
Instructions	IB 104 I
Affidavit for Arrest Warrant	IB 201
Warrant of Arrest	IB 202
Summons	IB 203
Summons to Appear	IB 204
Order to Show Cause/Employer	IB 301
Order to Show Cause/Employee	IB 302
Order to Show Cause/Deportation	IB 303

History: Rule 3-86, eff 7 Dec 86.

41.0408 Instruction to forms.

The forms listed in 41.0407 of this chapter that have instructions contain matters that are hereby approved as part of these rules relative to who may file petitions, supporting documents, rules for documents, filing dates, appearances before officers, fees, penalties, authority, and bond. The board or the Attorney General may alter the forms or instructions or create new ones, but they shall not be inconsistent with the Act or these rules.

History: Rule 3-86. Eff 7 Dec 86.

41.0409 Bonds.

(a) The Attorney General or chief immigration officer may in his/her discretion, require any alien who is either visiting or residing in American Samoa to post a cash bond, to ensure that she/he will not become a financial burden to the American Samoa Government, not to exceed an amount sufficient to pay transportation costs to his/her home country plus not more than \$500.

(b) In the case of a fishing vessel that is registered in or otherwise connected to, a jurisdiction outside of the geographic area of the United States, and is based in American Samoa, the Attorney

General or chief immigration officer may, in his/her discretion, require the owner of the vessel or his/her authorized representative American Samoa to post a bond, to ensure that each crewmember of such vessel will not: become a financial burden to the American Samoa Government in an amount sufficient to pay the transportation costs of all or any number of the crewmembers to his or her or their home country plus not more than \$500 per person.

(c) Sums deposited in accordance with this section shall be returned, or accounted for if used as provided in this section, to the deportee or payee upon his/her or the covered alien’s departure from American Samoa. The original receipt and a copy of the manifest or other proof demonstrating the alien left will be required to secure a full refund. The bond may be used to pay immigration fines or debts owed to the government. A request for a bond refund must be submitted to the Attorney General for authorization to pay not later than 60 days after occurrence of the event that justifies a bond refund.

History: Rule 3-86, eff 7 Dec 86; amd 2003, eff 1 Apr 2003.

Amendments: 2003, subsection (c) – added “A request for a bond refund must be submitted to the Attorney General for authorization to pay not later than 60 days after occurrence of the event that justifies a bond refund.”

TITLE 41 – CHAPTER 05 – CONTROL OF ALIENS DEPARTING FROM AMERICAN SAMOA; MANIFEST: INSPECTIONS

Sections:

- 41.0501 Definitions.
- 41.0502 Authority of immigration officer to prevent alien’s departure from American Samoa
- 41.0503 Aliens whose departure is prejudicial to the interest of American Samoa and the United States. See 8 CFR 215.3.
- 41.0504 Procedures in case of alien prevented from departing from American Samoa.
- 41.0506 Hearing procedure before the board.
- 41.0507 Arrival-departure manifests and lists-Supporting documents arrival manifest for passengers.
- 41.0508 Departure manifest for passengers.

- 41.0509 Detention for examination to determine mental or physical defects detention.
- 41.0510 Temporary removal for inspection.
- 41.0511 Inspection of persons applying for admission-Scope of examination.
- 41.0512 Temporary exclusion.

41.0501 Definitions.

For the purpose of this chapter:

- (a) “Alien” means any person who is not an American Samoan or a citizen or national of the United States. (b) Other words as defined in 41.0201 of this title shall serve as definition for this chapter.

History: Rule 3-86, eff 7 Dec 86.

41.0502 Authority of immigration officer to prevent alien’s departure from American Samoa.

- (a) No person shall depart, or attempt to depart American Samoa if his/her departure would be prejudicial to the interest of American Samoa or the United States Government. Any immigration officer who knows or has reason to believe that the case of an alien in American Samoa comes within the provision of 41.0503 of this chapter shall temporarily prevent the departure of such alien from American Samoa and shall serve him/her with a written temporary order directing him/her not to depart or attempt to depart from American Samoa until notified of the revocation of the order. A stop order shall be placed on such persons so that they cannot leave by airplane, ship or boat. No stop order shall be issued against any person unless there is probable cause to arrest the person except in the case of an alien who may be the subject of a stop order for owing money to the government (A.S.C.A., 41.0513 and 11.0103) and it is signed by an attorney working for the Attorney General.
- (b) The written order temporarily preventing an alien, other than an enemy alien, from departing from American Samoa shall become final 30 days after the day or service thereof upon the alien, unless prior thereto the alien requests a hearing as hereinafter provided. At such time as the alien is served with an order temporarily preventing his/her departure from American

Samoa, he/she shall be notified in writing concerning the provision of this subsection, and shall be advised of his/her rights to request a hearing as entitled thereto in 41.0504 of this chapter. In the case of an enemy alien, the written order preventing departure shall become final on the date of its service upon the alien and information shall be filed with the Secretary of State of the United States.

- (c) Any alien who seeks to depart from American Samoa may be required, in the discretion of the immigration officer, to be examined under oath and to submit for official inspection all documents, articles, and other properties in his/her possession which are being removed from American Samoa upon, or in connection with, the alien's departure. The immigration officer may permit certain other persons including officials of American Samoa and the United States Government and interpreters to participate in such examination or inspection and may exclude from presence at such examination or inspection any person whose presence would not further the objectives of such examination or inspection. The immigration officer shall temporarily prevent the departure of any alien who refuses to submit to such examination or inspection and may, if necessary to the enforcement of this requirement, take possession of the person's passport or other travel documents.

History: Rule 3-86. eff 7 Dec 86.

41.0503 Aliens whose departure is prejudicial to the interest of American Samoa and the United States. See 8 CFR 215.3.

The departure from American Samoa of any alien within one of the following categories shall be deemed prejudicial to the interests of American Samoa and the United States:

- (a) Any aliens who is in possession of, and who is believed likely to disclose to an unauthorized person, information concerning the plans, preparation, equipment, or establishment for the national defense and security of the United States;

- (b) Any alien who seeks to depart from American Samoa to engage in, or who is likely to engage in, activities of any kind designed to obstruct, impede, retard, delay or counteract the effectiveness of the national defense of the United States or the measure adopted by the United States or the United Nations for the defense of any other country;
- (c) Any alien who seeks to depart from American Samoa to engage in, or who is likely to engage in, activities which would obstruct, impede, retard, delay or counteract the effectiveness of any plans made or action taken by any country cooperating with the United States in measures adopted to promote the peace, defense, or safety of the United States or such other country;
- (d) Any alien who seeks to depart from American Samoa for the purposes of organizing, directing, or participating in any rebellion, insurrection, or violent uprising in or against the United States or a country allied with the United States, or of waging war against the United States or its allies, or destroying, or depriving the United State of sources of supplies or materials vital to the national defense of the United States, or to the effectiveness of the measures adopted by the United States for its defense, or for the defense of any other country allied with the United States;
- (e) Any alien who is subject to registration for training and service in the Armed Forces of the United States and who fails to present a Registration Certificate (SSS Form No. 2) showing that he/she has complied with his/her application to register under the universal Military Training and Service Act, as amended;
- (f) Any alien who is a fugitive from justice on account of an offense punishable in American Samoa or the United States; or
- (g) Any alien who is needed in American Samoa or in the United States as a witness in, or as a party to, any criminal case under investigation or pending in a court in American Samoa or in the United States; provided, that any alien who is witness in, or party to, any criminal case pending in any criminal court proceeding may be

permitted to depart from American Samoa with the consent of the prosecuting authority, unless such alien is otherwise prohibited from departing under the provisions of this chapter;

- (h) Any alien who is needed in American Samoa or the United States in connection with any investigation or proceeding being, or soon to be, conducted by any official, executive, legislative, or judicial agency in American Samoa or in the United States or by any governmental committee, board, bureau, commission, or body in American Samoa or in the United States, whether national, state, territorial, or local;
- (i) Any alien whose technical or scientific training and knowledge might be utilized by an enemy or a potential enemy of the United States to undermine and defeat the military in defense of the operation of the United States or any nation cooperating with the United States in the interest of collective security;
- (j) Any alien, where doubt exists whether such alien is departing or seeking to depart from American Samoa voluntarily except an alien who is departing or seeking to depart subject to an order issued in extradition, exclusion, or deportation proceeding.
- (k) Any alien whose case does not fall within any of the categories described in subsections (a) to (j), inclusive, of this section, but which involves circumstances of a similar character or the owing of money to the American Samoa Government rendering the alien's departure prejudicial to the interest of American Samoa or the United States Government.

History: Rule 3-86, eff 7 Dec 86.

41.0504 Procedures in case of alien prevented from departing from American Samoa.

- (a) Any alien, other than an enemy alien whose departure has been temporarily prevented under the provision of 41.0502 of this chapter, may, within 15 days of the service upon him/her of the written order temporarily preventing departure, request a hearing before the board. The alien's request for hearing shall be made in writing and shall be addressed to the chair of the board. If the alien's request for hearing is timely made, the

immigration officer shall schedule a hearing for the board, and notice of such hearing shall be given to the alien. Notice of hearing shall, as specifically as security considerations permit, inform the alien of the nature of the case against him/her, shall fix the time and place of the hearing, and shall inform the alien of his/her right to be represented, at no expense to the government, by counsel of his/her own choosing.

- (b) Every alien for whom a hearing has been scheduled under subsection (a) of this section shall be entitled:
 - (1) to appear in person before the immigration board;
 - (2) to be represented by counsel of his/her own choice at no expense to the government;
 - (3) to have the opportunity to be heard and to present evidence;
 - (4) to cross examine the witnesses who appear at the hearing, except, that if, in the course of the examination, a witness may divulge information of a confidential or security nature, the board may, in its discretion, preclude further examination of the witness with respect to such matters;
 - (5) to examine any evidence in possession of the government which is to be considered in the disposition of the case: provided, that such evidence is not of a confidential or security nature the disclosure of which would be prejudicial to the interest of the United States;
 - (6) to have the time and opportunity to produce evidence and witnesses on his/her own behalf; and
 - (7) to reasonable continuances upon request for good cause shown.
- (c) The board shall have the authority to:
 - (1) administer oaths and affirmations;
 - (2) present and receive evidence;

- (3) interrogate, examine, and cross-examine under oath or affirmation both the alien and witnesses;
- (4) rule upon all objections to the introduction of evidence or motions made during the course of a hearing;
- (5) take or cause depositions to be taken;
- (6) issues subpoenas;
- (7) take any further action consistent with applicable provisions of law, executive orders, and rules.

History: Rule 3-86, eff 7 Dec 86.

41.0506 Hearing procedure before the board.

- (a) The hearing before the board shall be conducted in accordance with the following procedures:
 - (1) The board shall advise the alien of the rights and privileges accorded to him/her under the provisions of 41.0505 of this chapter.
 - (2) The board shall enter the record:
 - (A) a copy of the order served upon the alien temporarily preventing his departure from American Samoa; and
 - (B) a copy of the notice of hearing furnished the alien.
 - (3) The alien shall be interrogated by the board as to the matters considered pertinent to the proceedings, with opportunity reserved to the alien to testify thereafter in his/her own behalf, if he/she so chooses.
 - (4) The board shall receive on behalf of the government such evidence, including the testimony of witnesses in the certificates or written statements of government officials or other persons, as may be necessary and available. In the event such certificates or statements are received in evidence, the alien may request and, in discretion of the board, be given an opportunity to interrogate such official or person, by deposition or otherwise, at a time and place and in a manner fixed by the board; provided, that when in the judgment of the

board any evidence relative to the disposition of the case is either a confidential or security nature the disclosure of which would be prejudicial to the interest of the United States, such evidence shall not be presented at the hearing but shall be taken into consideration in arriving at a decision in the case.

- (5) The alien may present such additional evidence, including the testimony of witnesses, as is pertinent and available.
- (b) Following the completion of the hearing, the board shall make and render a decision in the case, which shall be governed by and based upon the evidence presented at the hearing and any evidence of a confidential or security nature which the government may have in its possession. The decision of the board shall decide:
 - (1) That the temporary order preventing the departure of the alien from American Samoa be made final; or
 - (2) That the temporary order preventing the departure of the alien from American Samoa be revoked;
 - (3) This decision shall be made in writing and shall set forth the board's reasons for such decision. The alien concerned shall at his/her request be furnished a copy of the decision of the board.

Notwithstanding any other provision of this chapter, the United States Administrator of the Bureau of Security and Counselor Affairs referred to in Section 104(b) of the Immigration and Naturalization Act of the United States, or such other officers of the Department of State as he/she may designate, after consultation with the Immigration and Naturalization Service of the United States may at any time permit the departure of an individual alien or a group of aliens from American Samoa if he/she determines that such action would be in the national interest. If the Administrator specifically requests the Attorney General of American Samoa to prevent the departure of a particular alien or a group of aliens, the Attorney General shall not permit departure of said alien or

aliens until he/she has consulted with the Administrator.

In any case arising in the national interest or the national security for the United States Government, the Administrator shall, at his/her request be kept advised by, in as much detail as he/she may indicate is necessary, of the facts and of any action taken or proposed.

History: Rule 3-86, eff 7 Dec 86.

41.0507 Arrival-departure manifests and lists-Supporting documents arrival manifest for passengers.

- (a) Vessels. The captain, master or agent of every vessel or aircraft arriving in American Samoa from a foreign place or from the United States must present a manifest of all alien passengers on board to the immigration officer at the first port of arrival. A complete roster of all passengers that embark at each port en route towards American Samoa shall be presented by the captain, master or agent to the immigration officer at the first port of arrival in American Samoa. Each passenger on any vessel or aircraft shall fill out an arrival-departure cards as required by the immigration office. An arrival/departure cards is not required by the immigration office. An arrival-departure card is not required for an arrival, through-flight passenger at an American Samoa port for which he/she will depart directly to a foreign country or the United States on the same flight; provided, the number of such through-flight passengers is noted on the manifest and such passenger remains during the ground time in a separate area under the direction and control of immigration officers.
- (b) Deferred Inspection. When inspection of an arriving passenger is deferred at the request of the carrier to another port of debarkation, the manifest relating to any such passengers shall be returned for presentation by the captain, master, or agent at the port where inspection is to be conducted.

History: Rule 3-86, eff 7 Dec 86.

41.0508 Departure manifest for passengers.

The captain, master or agent, of every vessel and aircraft departing from American Samoa for a foreign place or the United States must present a manifest of all alien passengers on board to the immigration officer at the port of departure. Captain's manifest shall set forth each port of disembarkation and the number of passengers (including aliens, United States citizens and nationals) destined thereto which shall be submitted by the carrier to the immigration officer at the last port of departure in American Samoa.

History: Rule 3-86, eff 7 Dec 86.

41.0509 Detention for examination to determine mental or physical defects detention.

When an immigration officer has reasonable grounds for believing the person arriving in American Samoa should be detained for reasons specified in 41.0615(1), (2), (3), (5), (6), or (18) of the Act, he/she shall after consultation with the public health officers of American Samoa at the port of entry, notify the captain, master or agent of the arriving vessel or aircraft of the intention to effect such detention on board the arriving vessel, another vessel of the same transportation line, at the airport of arrival, or any other suitable place of detention. Such notice shall indicate the name of the persons to be detained, the place of detention and reasons therefor. If the master or agent desires to assume responsibility during removal and detention, he/she shall so request the immigration officer, and if granted, shall execute an agreement to assume such responsibility. Following determination of admissibility, the immigration officer will ascertain the assessable detention expenses and bill or reimburse the captain, master or agent.

History: Rule 3-46, eff 7 Dec 86.

41.0510 Temporary removal for inspection.

When an immigration officer at the port of entry has reasonable grounds for believing that it would facilitate the inspection of persons arriving in American Samoa, if they were temporarily removed, he/she shall notify the captain, master or agent of the arriving vessel or aircraft of his/her intention to effect their removal for examination. Such notice shall indicate the names of the persons to be removed, the place to which they shall be removed, and the reasons

therefor. If the captain, master or agent desires to assume responsibility during removal and detention, he/she shall so request the immigration officer at the port of entry and, if granted, shall execute an agreement to assume such responsibility. Following determination of admissibility, the immigration officer will ascertain the assessable detention expenses and bill or reimburse the captain, master or agent.

History: Rule 3-86, eff 7 Dec 86.

41.0511 Inspection of persons applying for admission-Scope of examination.

- (a) General. Application to enter American Samoa shall be made in person to an immigration officer at a port of entry at a time when an immigration officer at the port is open for inspection.
- (b) United States Citizens, Nationals and American Samoans. A person claiming to be a United States citizen, a national or American Samoan must establish that fact to the examining immigration officer's satisfaction and must present a U.S. passport or a certified birth certificate or other travel document. If such an applicant for admission fails to satisfy the examining immigration officer that he/she is a U.S. citizen, a national or American Samoan, he/she shall thereafter be inspected as an alien. A driver's license shall not be considered a valid travel document.
- (c) Alien Members of the United States Armed Forces and Members of a NATO Country. Any alien member of the United States Armed Forces who is in the uniform of, or bears documents identifying him/her as a member of, such Armed Forces, and whose coming to or departing from American Samoa under official orders or permit of such Armed Forces is not subject to the exclusion provisions of the Act. A member of the force of a NATO country signatory to Article III of the Status of Forces Agreement seeking to enter American Samoa under official orders is exempt from the control provisions of the Act; Any alien who is a member of either of the foregoing classes may, upon request, be inspected under the provisions of the Act, and his/her entry as an alien may be recorded. If the alien does not appear to the examining

immigration officer to be clearly and beyond a doubt entitled to enter American Samoa under the provisions of the Act, the alien shall be so informed and his/her entry shall not be recorded.

- (d) Qualifications for Aliens. The following general qualifications and requirements shall be met by each alien seeking to enter American Samoa for permanent, indefinite, or temporary stay, and regardless of the purpose for which he/she seeks to enter:

- (1) He/she shall present whatever documents are required and shall establish to the satisfaction of the immigration officer that he/she is not subject to exclusion under the Act and is entitled under all of the applicable provisions of the immigration laws and this title to enter American Samoa.
- (2) Any person, including an alien crewman on board a vessel en route to American Samoa solely for bunkering purposes or an aircraft enroute to American Samoa solely for refueling purposes, who does not seek to enter American Samoa, shall be regarded as not arriving for purposes of immigration.

History: Rule 3-86, eff 7 Dec 86.

41.0512 Temporary exclusion.

Any immigration officer who temporarily excludes an alien under the Act shall report such action promptly to the chief immigration officer and the attorney general in writing. The immigration officer shall, if possible, take a brief sworn question and answer statement from the alien, and the alien shall be notified by personal service of the action taken and the right to make written representations. If the chief immigration officer or the Attorney General is satisfied that the alien is inadmissible to American Samoa under the Act and concludes that such inadmissibility is based on information of a confidential nature, the disclosure of which would be prejudicial to the public interest, safety, or security, he/she may deny any hearing or further hearing by the board and order such alien excluded and deported, or enter such other order in the ease as he/she deems appropriate. In any other case, the chief immigration officer or the Attorney General may direct that an immigration officer shall further examine the alien as

to his/her admissibility or that the alien be given a hearing before the board. If the chief immigration officer or the Attorney General directs that an alien temporarily excluded be given a hearing before the board, such hearing and all further proceedings in the case shall be conducted in accordance with provisions of 41.0506 of this chapter and other applicable sections of the Act to the same extent as though the alien had been referred to the board by the immigration officer; except that if confidential information, not previously considered in the case, is adduced supporting the exclusion of the alien under the Act, the disclosure of which, in the discretion of the board, may be prejudicial to the public interest, safety, or security, the board may again temporarily exclude the alien under the Act and further action shall be taken as provided in this section.

History: Rule 3-86, eff 7 Dec 86.

TITLE 41 – CHAPTER 06 – EXCLUSION OF ALIENS

Sections:

- 41.0601 Authority of immigration officer.
- 41.0602 Hearing before the immigration board.
- 41.0603 Decision of the immigration board- Notice to the applicant.

41.0601 Authority of immigration officer.

In determining cases referred for further inquiry as provided in the Act, immigration officers shall have the power and authority conferred upon them by the Act and this title. Subject to any specific limitations prescribed by the Act and this title, immigration officers shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases. Any alien who is dissatisfied with the act of an immigration officer relative to his/her exclusion shall have the right to appeal to the immigration board.

History: Rule 3-86, eff 7 Dec 86.

41.0602 Hearing before the immigration board.

- (a) Opening. Exclusion hearings shall be closed to the public, unless the alien at his/her instance requests that the public, including the press be

permitted to attend; in that event the hearing shall be opened; provided, that the alien states for the records that she/he is waiving the requirement in 41.0307 of the Act that all records shall be kept confidential. When the hearing is to be opened, depending upon physical facilities, reasonable limitations may be placed upon the number in attendance at any one time, with priority being given to the press over the general public. The board shall ascertain whether the applicant for admission is the person who is the subject of an order of exclusion by an immigration officer; enter a copy of such order in evidence as an exhibit in the case inform the applicant of the nature and purpose of the hearing; advise him/her of the privilege of being represented by an attorney of his/her own choice at no expense to the government, and of the availability of free legal services programs if any; and shall ascertain that the applicant has received a list of such programs; and request him/her to ascertain then and there whether she/he desires representation; advise him/her that he/she will have a reasonable opportunity to present evidence in his/her own behalf, to examine and object to evidence against him/her and to cross-examine witnesses presented by the government and place the applicant under oath.

- (b) Procedure. The board shall receive and adduce materials and relevant evidence, rule upon objections and otherwise regulate the course of the hearing.
- (c) Attorney General. The board may request the Attorney General to assign or the Attorney General may assign an assistant attorney general to each case in which the applicant's nationality is in issue. The duties of an assistant attorney general include, but are not limited to, the presentation of evidence and the interrogation, examination and cross-examination of the applicant and other witnesses. Nothing contained herein diminishes the authority of the board to conduct proceedings under this part.

History: Rule 3-86, eff 7 Dec 86.

41.0603 Decision of the immigration board-

Notice to the applicant.

- (a) Contents. The decision of the board may be oral or written. It shall include a discussion of the evidence and findings as to excludability; the formal enumeration of findings is not required. The decision shall be included with the order of the board.
- (b) Oral Decision. An oral decision shall be stated for the record by the board at the conclusion of the hearing and in the presence of the applicant. When entitled to appeal from an adverse decision or the board, the applicant shall be so advised and be so required to state then and there that she/he wishes to appeal. At his/her request, the applicant shall be furnished with a typewritten transcript of the oral decision of the board.
- (c) Written Decision. When the decision of the board is in writing, the immigration officer shall serve a signed copy thereof on the applicant.

History: Rule 3-86, eff 7 Dec 86

TITLE 41 – CHAPTER 07 – DEPORTATION OF EXCLUDED ALIENS

Sections:

- 41.0701 Stay of deportation of excluded alien.
- 41.0702 Notice to surrender for deportation.
- 41.0703 Cost of maintenance not assessed.
- 41.0704 Notice to transportation line of alien’s exclusion.

41.0701 Stay of deportation of excluded aliens.

The immigration officer in charge of the port of arrival may stay the immediate deportation of an excluded alien under such conditions as he/she may prescribe.

History: Rule 3-86, eff 7 Dec 86.

41.0702 Notice to surrender for deportation.

An alien who has been finally excluded pursuant to chapter 06 of this title may at any time surrender him/herself to the custody of the office and shall surrender to such custody upon notice in writing of the time and place for surrender. The office may take the alien into custody at any time. An alien taken into

custody either upon notice to surrender or by arrest shall not be deported in less than 72 hours thereafter without his/her consent thereto filed in writing with the chief immigration officer.

History: Rule 3-86, eff 7 Dec 86.

41.0703 Cost of maintenance not assessed.

A claim shall be established to the satisfaction of the chief immigration officer from whose adverse decision no appeal shall lie. The chief immigration officer shall afford the claimant a reasonable time within which to submit affidavits and briefs to support its claim.

History: Rule 3-86, eff 7 Dec 86.

41.0704 Notice to transportation line of alien’s exclusion.

An excluded alien shall, immediately or as promptly as the circumstances permit, be offered for deportation to the, master, commanding officer, purser, person in charge, agent, owner, or consignee of the vessel or aircraft on which the alien is to be deported, as determined by the chief immigration officer, with a written notice specifying the cause of exclusion, the class of travel in which such alien arrived and is to be deported, and with the return of any documentation which will assist in effecting his/her deportation.

History: Rule 3-86, eff 7 Dec 86.

TITLE 41 – CHAPTER 08 – PROCEEDING TO DETERMINE DEPORTATION OF ALIEN IN AMERICAN SAMOA-APPREHENSION, CUSTODY, HEARING, & APPEAL

Sections:

- 41.0801 Order to show cause and notice of hearing.
- 41.0802 Apprehension, custody, and detention.
- 41.0803 Confined aliens, incompetents, and minors.
- 41.0804 Voluntary departure prior to commencement of hearing.
- 41.0805 Waiver of right before the immigration board.
- 41.0806 Cancellation of proceedings.
- 41.0807 Deportation hearing.
- 41.0808 Decision of the board.

- 41.0809 Notice of decision.
- 41.0810 Finality of order.
- 41.0811 Reopening or reconsideration.
- 41.0812 Expulsion.

41.0801 Order to show cause and notice of hearing.

- (a) Commencement. Pursuant to 41.0610 of the Act the Attorney General may order the arrest and detention of any person pending a determination of that person’s deportability. Any person taken into custody, may, in the discretion of the Attorney General, pending a final determination of deportability, (1) be continued in custody; (2) be free on bond for an amount not less than the cost of one-way transportation to the country from where he/she came plus \$500, with security approved by the Attorney General, and containing such conditions the Attorney General may prescribe; or (3) be released on conditional parole. The Attorney General has delegated to the chief immigration officer the authority to make such arrest in accordance with law. Any person so arrested may appeal the decision to the board. Every proceeding to determine the deportability of an alien in American Samoa to the board is commenced by the issuance and service of an order to show cause by the office, or on appeal by the alien. In the proceedings the alien shall be known as the respondent.
- (b) Statements of Nature of Proceedings. The order to show cause will contain a statement of the nature of the proceeding, the legal authority under which the proceeding is conducted, a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of the law and a designation of charges against the respondent and the statutory provisions alleged to have been violated. The order will require the respondent to show cause why he/she should not be deported. The order will call upon the respondent to appear before the board for a hearing at a time and place which may be stated in the order or may be later specified. Respondent shall be notified of the time and place of the hearing not less than 7 days before the hearing date except that where the issuing officer, in his/her discretion, the public

interest, safety or security so requires, may schedule the hearing on shorter notice. The issuing officer may, in his/her discretion schedule the hearing on shorter notice in any other case at the request and for the convenience of the respondent.

- (c) Service. Service of the order to show cause may be accomplished either by personal service or routine service; however, when routine service is used and the respondent does not appeal for a hearing or acknowledge in writing that he/she has received the order to show cause, it shall be reserved by personal service. When personal delivery of an order to show cause is made by an immigration officer, contents of the order to show cause shall be explained and the respondent shall be advised that any statement she/he makes may be used against him/her. He/she shall also be advised of his/her rights to representation by counsel of his/her own choice at no expense to the government. He/she shall also be advised of the availability of free legal services programs in American Samoa if any. He/she shall also be furnished with a list of such programs.

History: Rule 3-86.eff 7 Dec 86.

41.0802 Apprehension, custody, and detention.

- (a) Warrant of Arrest. At the commencement of any proceeding under this part, or at any time thereafter and up to the time respondent becomes subject to supervision under the authority contained in the Act, the respondent may be arrested and taken into custody under the authority of a warrant of arrest. However, such warrant may be issued by no one other than a member of the board, and then only whenever, in his/her discretion, it appears that the arrest of the respondent is necessary or desirable and is substantiated by an affidavit. If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation. When a warrant of arrest is served under this part, the respondent shall have explained to him/her the contents of the order to show cause; the reason for the arrest and right to be represented by counsel of his/her choice at no

expense to the government. He/she shall also be advised of the availability of free legal service programs, if any, and furnished with a list of such programs. He/she shall be advised that any statement made may be used against him/her. He/she shall also be informed whether he/she is to be continued in custody, or if release from custody has been authorized, of the amount and condition of the bond or the conditions under which he/she may be released. A respondent on whom a warrant of arrest has been served may apply to the Attorney General for release or for amelioration of the conditions under which he/she may be released.

- (b) Authority of the Immigration Board-Appeals. After an initial determination pursuant to subsection (a) of 41.0801 of this chapter, and at any time before a deportation order becomes administratively final, upon application by the respondent for release from custody or for amelioration of the conditions under which he/she may be released, the board may exercise the authority contained in the Act to continue or detain a respondent in, or release him/her from custody, and to determine whether a respondent shall be released under bond, and in the amount thereof, if any. Application for the exercise of such authority may be made to the board. Consideration under this subsection by the board of an application or request of an alien regarding custody or bond shall be separate and apart from any deportation hearing or proceeding under this part, and shall form no part of such hearing or proceeding or of the record thereof, the determination of the board as to custody status or bond may be based upon any information which is available to the board or which is presented to the board by the alien or the officer.
- (c) Revocation. When an alien who having been arrested and taken into custody, has been released, such release may be revoked at any time at the discretion of the Attorney General, in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and cancelled. Subsection (b) of this section shall govern availability to the

respondent of recourse to other administrative authority for release and custody.

- (d) Privilege of Communication. Every detailed alien shall be notified that he/she may communicate with the counsel of diplomatic officers of the country of his nationality.

Existing treaties require immediate communication with appropriate counselor of diplomatic officers whenever nationals or certain countries are detained in exclusion or expulsion proceedings, whether or not requested by the alien, and, in fact, even if the alien requested no communication be undertaken in his/her behalf. See Appendix A following this title.

History: Rule 3-86, eff 7 Dec 86.

41.0803 Confined aliens, incompetents, and minors.

- (a) Service. If the respondent is confined, or if he/she is incompetent, or a minor under the age of 14, the order to show cause, and the warrant of arrest, if issued, shall be served in the manner described in this chapter upon the person or in the person's name.
- (b) Office Custody-Cost of Maintenance. An alien confined because of physical or mental disability in an institution or at the hospital will not be accepted into physical custody by the office until an order of deportation has been entered and the office is ready to deport the alien. When such an alien is an inmate of a public or private institution at a time of the commencement of the deportation proceedings, expenses for the maintenance of the alien shall not be incurred by the government until the alien is taken under physical custody by the officer.

History: Rule 3-86, eff 7 Dec 86.

41.0804 Voluntary departure prior to commencement of hearing.

- (a) Authorized Officers. The authority contained in 41.0601 A.S.C.A., may be exercised by any immigration officer. Any person remaining in American Samoa beyond the time allowed by law or the board who voluntarily departs before a hearing is held by the board is prohibited from reentering American Samoa for any purpose for

one year. Any person, ordered deported by the board, remaining in American Samoa beyond the time allowed by law or the board is prohibited from reentering American Samoa for any purpose for one year, and for 5 years is not eligible under the numerical limitations of chapter 3 of the Act.

- (b) Authorization. Voluntary departure may be granted to any alien who is statutorily eligible. A person who has voluntarily surrendered him/herself to the office or in whose case the chief immigration officer has determined there are compelling factors to warrant him to grant voluntary departure are eligible.
- (c) Period of Time. Any grant of voluntary departure shall contain a time Limitation of usually not more than 10 days, and an extension of the original voluntary departure time shall not be authorized except under meritorious circumstances and approved by the Attorney General. Upon failure to depart, deportation proceedings will be pursued.
- (d) Application. Any alien who believes him/herself to be eligible for voluntary departure under the Act may apply therefore at the office any time prior to the commencement of the deportation proceedings against him/her or if deportation proceedings have been commenced, any time prior to the commencement of the hearing. Any immigration officer may deny or grant the application and determine the condition under which the alien's departure shall be affected. An appeal shall not lie from a denial of an application for voluntary departure under this section, but the denial shall be without prejudice to the alien's right to apply for relief from deportation under any provision of law.
- (e) Revocation. If, subsequent to the granting of an application for voluntary departure under this section, it is ascertained that the application should not have been granted, that grant may be revoked without notice by the chief immigration officer.

History: Rule 3-86, eff 7 Dec 86.

41.0805 Waiver of right before the immigration board.

Any alien who has been advised that he/she has been accused of violating the immigration laws of American Samoa shall have the right to waive their rights before the board. Any officer may provide a form to any alien who desires to waive their rights that they have been advised that because of the alleged violation he/she may be deported from American Samoa; however, before he/she can be deported the alien has a right to a hearing before the board. The officer shall advise the alien when the board will meet and where; the alien shall be advised that at a deportation hearing before the board, the alien has the following rights:

1. A reasonable notice of the nature of the charge against the alien and the time and place of the hearing;
2. To be represented by counsel of alien's choice at no cost to the government;
3. A reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's behalf and cross-examine witnesses;
4. The right to have witnesses subpoenaed to testify before the board on the alien's behalf;
5. That no decision of deportability will be valid unless it is based on reasonable, substantial and appropriate evidence.

The form shall also advise the alien that because of an overlay in American Samoa beyond the time allowed by law or the board that the alien can be prohibited from reentering American Samoa for five years and not eligible under the numerical limitations of 41.0301 et seq. of the Act for 10 years. The alien will be required to sign a statement saying that the alien has carefully read the waiver and understands all rights before the board and that the rights are waived and the alien does not desire a board hearing, but rather consents to be placed on the next available transportation to the alien's home. The alien is to receive a copy of the waiver and sign a statement that he/she understands.

History: Rule 3-86, eff 7 Dec 86.

41.0806 Cancellation of proceedings.

- (a) If an order to show cause has been issued by any officer, the office may cancel the order to show cause or, prior to the actual commencement under a served order to show cause, terminate proceedings thereunder, if in either case he/she is satisfied that the respondent is actually a national of the United States or an American Samoan, or is not deportable under the immigration laws, or is deceased, or is not in American Samoa, or the proceedings was improvidently begun; or after actual commencement of a hearing such officer may move that the case be remanded to the office on the grounds that it has come to the attention of the office that they are involved in the foreign relations of the United States which require further consideration. Cancellation of an order to show cause or termination of proceedings or remand of a case pursuant to the foregoing shall be without prejudice to the alien or the office. If an order to show cause has been cancelled or proceedings have been terminated pursuant to this section, any outstanding warrant of arrest shall also be cancelled.
- (b) The basis and purpose of the prescribed rules in subsection (a) of this section are to empower the immigration office to issue and cancel orders to show cause and to empower the office to request warrants of arrest.

History: Rule 3-86, eff 7 Dec 86.

41.0807 Deportation hearing.

- (a) Opening. The immigration board shall advise the respondent of his/her right to representation, at no expense to the government by counsel of his/her choice authorized to practice in the proceedings and require the alien to state then and there whether the alien desires representation; advise the respondent of the availability of free legal services programs if any; ascertain the respondent has received a list of such programs; advise the respondent that he/she will have reasonable opportunity to examine and object to the evidence against him/her, to present evidence in his/her own behalf and to cross-examine witnesses presented by the government; place respondent under oath;

read the factual allegations and the charges in the order to show cause to the respondent and explain them in nontechnical language, and enter the order to show cause as an exhibit in the record. Deportation hearings shall be opened to the public except, that the board may, in its discretion and for the purpose of protecting witnesses, respondent, or public interest, direct that the general public or particular individuals shall be excluded from the hearing in any specific case. Depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public.

- (b) Pleading by Respondent. The board shall require the respondent to plead to the order to show cause by stating whether he/she admits or denies the factual allegations and deportability under the charges contained therein. If the respondent admits the factual allegations and admits the deportability under the charges and the board is satisfied that no issue of law or fact remains, the board may determine that the deportability as charged has been established by the admissions of the respondent. The board shall not accept an admission of deportability from an unrepresented respondent who is incompetent or under age 16 and is not accompanied by a guardian, relative or friend; nor from an officer of an institution in which a respondent is an inmate or patient. When, pursuant to this subsection, the board may not accept an admission of deportability, it shall direct a hearing on the issue.
- (c) Issues of Deportability. When deportability is not determined under the provision of subsection (b) of this section, the board shall request the assignment of an assistant attorney general, and shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading.
- (d) Additional Charges. An assistant attorney general who has been assigned to a case may at any time during a hearing lodge additional charges of deportability, including factual

allegations against the respondent. The additional factual allegations and charges shall be submitted in writing and entered as an exhibit in the record. The board shall read the additional factual allegations and charges to the respondent and explain them to him/her in nontechnical language. The board shall advise the respondent, if the alien is not represented by counsel, that he/she may be so represented and that he/she may have a reasonable time within which to meet the additional factual allegations and charges. The respondent shall be required to state then and there whether he/she desires a continuance for either of these reasons. Thereafter, the provision of subsection (b) of this section shall apply to the additional factual allegations and lodged charges.

- (e) The board shall conduct proceedings under this chapter to determine the deportability of any person. Determination of deportability shall be made only upon a record made in a proceeding before the board and the person shall have a reasonable opportunity to be present unless by reason of a person's incompetency it is impractical for him/her to be present; in which case the board shall prescribe necessary and proper safeguards for his/her rights and privileges. If any person who has been given a reasonable opportunity to be present at a proceeding under this chapter and without reasonable cause fails or refuses to attend or to remain in attendance, the board may proceed to a determination in a like manner as if the person were present.

History: Rule 3-86, eff 7 Dec 86.

41.0808 Decision of the board.

- (1) Contents. The decision of the board may be oral or written. Except when deportability is determined on the pleading pursuant to subsection 41.0807(b) of this chapter, the decision of the board shall include a discussion of the evidence and findings as to deportability. The formal enumeration of findings is not required. The decision shall also contain a discussion of the evidence pertinent to any application made by the respondent and the reason for granting or denying the request. The

decisions shall be concluded with the order of the board.

- (b) Summary Decision. Notwithstanding the provisions of subsection (a) of this section, in any case where deportability is determined on the pleadings pursuant to the subsection 41.0807(b) or the respondent applies for voluntary departure and the board grants the application, the board may enter a summary decision, if deportation is ordered or if voluntary departure is granted with an alternate order of deportation.

History: Rule 3-86, eff 7 Dec 86.

41.0809 Notice of decision.

- (a) Written Decision. A written decision shall be served upon the respondent and the Attorney General together with the notice informing the respondent of appeal right. Service by mail is complete upon mailing.
- (b) Oral Decision. An oral decision shall be stated by the board in the presence of the respondent and the assistant attorney general, if any, at the conclusion of the hearing. A typewritten copy of the oral decision shall be furnished at the request of the respondent or the Office of the Attorney General.
- (c) Summary Decision. When the board renders a summary decision, it shall serve a copy thereof upon the respondent at the conclusion of the hearing.

History: Rule 3-86, eff 7 Dec 86.

41.0810 Finality of order.

The order of the board shall be final and subject to appeal at the High Court pursuant to the Act.

History: Rule 3-86, eff 7 Dec 86.

41.0811 Reopening or reconsideration.

The immigration board may upon its own motion or, upon motion of the respondent or the assistant attorney general reopen or reconsider any case in which it made a decision. A motion to reopen will not be granted unless the board is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing. The board may stay deportation pending

its determination of the motion and also pending the taking and disposition of an appeal from such determination. All requests for consideration must be filed within 15 days of receipt of the board’s decision.

History: Rule 3-86, eff 7 Dec 86.

41.0812 Expulsion.

Once an order of deportation becomes final from the board, an alien, not in the physical custody of the office, shall be given not less than 48 hours advance notice in writing of the time and place of his/her surrender for deportation. If the alien fails to surrender as directed, he/she shall be deported without further notice when located. When an alien is directed to surrender for deportation, he/she shall do so notwithstanding the riling of an application for a stay of deportation unless the alien has been informed prior to the surrender date that a stay has been granted. The advance notice requirement above does not preclude taking an alien into custody at any time, including any time within the 48 hour period, if the alien’s being at large constitutes a danger to public safety or security, or the immigration officer has reason to believe the alien is likely to abscond. However, in such an instance, the alien’s deportation shall not be effective prior to the expiration of 48 hours from the time of apprehension or of the 48 hour notice period, whichever is less. An alien shall be taken into custody prior to the time specified in the surrender notice only pursuant to an order by a member of the board which authority to issue warrants of arrest.

History: Rule 3-86, eff 7 Dec 86.

TITLE 41 – CHAPTER 09 – (RESERVED)

TITLE 41 – CHAPTER 10 – ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE-EMPLOYMENT-BECOMING AN AMERICAN SAMOA

Sections:

- 41.1001 Eligibility.
- 41.1002 Application.
- 41.1003 Order granting permanent resident status.

- 41.1004 Loss of permanent residents status.
 - 41.1005 Employment of aliens.
 - 41.1006 Becoming an American Samoa.
 - 41.1007 Entry permits.
 - 41.1008 Certificates of identity, stateless certificates and travel permits.
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41.1001 Eligibility.

Persons may apply for the status of permanent resident in American Samoa on the following basis:
Title

- (a) As an American Samoa pursuant to 41.0402(a) of the Act;
- (b) As a person who established American Samoa as the permanent residence on or before 1 January 1950 and whose spouse and children are entitled to permanent residence because they have continuously resided here since that day pursuant to 41.0402(b) of the Act;
- (c) As a person who continuously resided in American Samoa for 10 years prior to October 15, 1984 pursuant to 41.0603(2) of the former Act;
- (d) As a person who is physically and legally present in American Samoa for a continuous period of at least 20 years of good moral character, for whom deportation would be a hardship, pursuant to 41.0403(a) (1) of the Act;
- (e) As a person who after January 1, 1981 was legally adopted by an American Samoa and who is 21 years of age or younger, pursuant to 41.0403 (a)(2) of the Act; and
- (f) As a person who on or before December 31, 1980 was’ legally adopted by an American Samoan, pursuant to 41.0403(a)(2) of the Act.

History: Rule 3-86, eff 7 Dec 86.

41.1002 Application.

- (a) Any person applying to become a permanent resident must submit a separate application. The board hereby approves forms IB 101, IB 101 1, and IB 102 for use relative to permanent residence. The board shall have exclusive

jurisdiction in declaring eligibility for permanent residents pursuant to the act.

- (b) It is the policy of the Attorney General that an alien applying for permanent residence pursuant to 41.0403(a)(1) A.S.C.A., who was granted permission to remain and/or work in American Samoa pursuant to 41.0301(d) A.S.C.A. (outside of the numerical limitations established by section 41.0301 A.S.C.A., shall not count the years of that status toward the residency requirement for permanent residence.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 5 May 2010.

Amendments: 2010, numbered original provision (a); new subsection (b) added as indicated above.

41.1003 Order granting permanent resident status.

Upon consideration of the application by the Attorney General of persons who have filed for permanent residence status, the Attorney General shall decide based on evidence presented whether the person will be granted permanent resident status or not. Persons who apply for permanent resident status are to be cautioned that if the basis for their eligibility is false or if the person resides outside of American Samoa in excess of six months without approval of the Attorney General or his designee, he/she may lose the permanent resident status. The alien is also hereby informed that other causes for loss of status will be found at 41.0403 of the Act. Aliens who are permitted to stay in American Samoa must be registered with the immigration office at all times and notify the Attorney General in writing with any change of address within 10 days after the change, pursuant to 41.0308(a) of the Act

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 5 May 2010.

Amendment: 2010, deleted “immigration board,” added “Attorney General,” deleted “at a hearing,” deleted “board,” added “Attorney General or his designee.”

41.1004 Loss of permanent residents status.

Permanent residents may lose their status if they reside outside American Samoa for a period in excess of 6 months without approval of the Attorney General or his designee. Any non-American Samoan permanent resident can lose the status of “permanent

resident” by action of the Attorney General because that person has violated the requirements of 41.0405 of the Act. The office of the Attorney General may file an order to show cause against any alien who has received the status of permanent resident for the purpose of losing that status. The alien shall have the right to appear at the hearing and to be served with process.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 5 May 2010.

Amendments: 2010, deleted “board,” added “Attorney General or his designee,” deleted “board,” added “Attorney General.”

41.1005 Employment of aliens.

- (a) No person may knowingly employ any alien without written approval before the person commences work.
- (b) No alien may seek employment or become employed without prior written approval of the office or the board.
- (c) Subsection 41.0409(c) A.S.C.A., provides for a hearing before the board for any person who has violated subsection (a) or (b) of 41.0409 A.S.C.A. This hearing shall be commenced by the filing of an order to show cause by any immigration officer against any employer and/or employee for a hearing before the board.
- (d) It is the policy of the immigration board that the employer shall be the sponsor of all alien employees unless a sufficient reason should appear to the board for allowing another person to sponsor the alien. It is the policy of the board to deny transfer or adjustment of status of those aliens registered pursuant to section 41.0301(d) A.S.C.A., designated as the special provision or SP, to another alien status, classification or preference category unless otherwise provided by law.
- (e) Any person sponsoring, another must reside in American Samoa during the period of sponsorship. Should it appear to the Attorney General, chief immigration officer, or the board that the sponsor has departed from American Samoa for an indefinite period of time, the person sponsored may have permission to remain revoked. A sponsor shall lose his

authority to sponsor a person if he/she fails to pay all costs as established by 41.0408(e) A.S.C.A., or if he/she resides outside of American Samoa in excess of 3 consecutive months in violation of 41.0408(f) A.S.C.A., or if he/she is sponsoring aliens contrary to the Act.

History: Rule 3.86, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, subsection (d) – deleted “It is the policy of the board to deny requests for transfer from one employer to another for sponsorship pursuant to 41.0408(h) of the Act;” added - see amended language indicated above.

41.1006 *Becoming an American Samoa.*

Pursuant to 41.0202(J)(c)(ii) A.S.C.A., the Attorney General or his designee is to approve eligible persons as American Samoans. The Attorney General hereby approves form IB 103 and IB 1031 for filing purposes.

History: Rule 3-86, eff 7 Dec 86; amd 2010, eff 3 May 2010.

Amendments: 2010, deleted “board,” added Attorney General or his designee,” deleted “board,” added “Attorney General.”

41.1007 *Entry permits.*

(a) An alien traveling to American Samoa must have a sponsor provide the following to the Immigration Office at least three business days before entry to American Samoa to obtain a thirty-day entry permit:

- (1) An application by local sponsor and approval of the senior matai of the family if sponsor lives on communal land or, if a religious exchange, the head of the church in American Samoa; and
- (2) approval of the pulenu’u or district governor or designated representative; and
- (3) proof of valid travel documents and round trip tickets or onward passage, and a valid passport that will not expire during the visit; and
- (4) A clearance from the American Samoa Medical Center business office and the District Court of American Samoa. A medical clearance and police clearance from the country of origin, unless the

Attorney General or his designee waives on or more such clearances if there are adequate measures to protect the health and safety of the resident of American Samoa

(b) Any person or group arriving in American Samoa without the approvals required in subsection (a) of this section may be refused entry by an immigration officer.

(c) The following fees shall be charged for an entry permit and other authorization or service to facilitate entry in to American Samoa:

- (1) One person, \$40.00; extension \$50.00
- (2) 10 to 20 persons, \$200.00;
- (3) 21 to 50 persons, \$300.00;
- (4) 51 to 100 persons, \$400.00;
- (5) 101 persons and above, 200, \$500.00, plus \$5.00 for each additional person over 200;
- (6) Multiple entry permit - \$50.00 per month. Multiple entry permits shall be available for commercial business travelers only.
- (7) 14-day pass - \$10.00 per person per trip; available only to citizens of the Independent State of Samoa with a registered business in Samoa, who travels to American Samoa for a business purpose. Must have a valid travel document, roundtrip ticket, local sponsor, and clearances from the District Court of American Samoa and the American Samoa Medical Center business office.
- (8) Authorization to enter American Samoa granted to an American Samoan or a United States national or citizen to permit entry without proper travel documents or other non-compliance with entry requirements - \$50.00.
- (9) Authorization to enter American Samoa granted to an alien due to an emergency to permit entry without proper travel documents or other non-compliance with entry requirements - \$50.00.
- (10) A memorandum or letter confirming authorization to enter American Samoa

prepared for alien crew member faxed or otherwise transmitted with an entry permit to facilitate entry - \$25.00.

- (d) Upon satisfactory showing of compliance with the requirements of subsections (a), (b) and (c)(1) to (c)(5) of this section, the Attorney General or his designee, or the chief immigration officer may grant up to 30 days to visit American Samoa. A visitor granted a 30-day permit may apply for only one extension of 30 days; upon expiration of the extension, the visitor shall depart American Samoa immediately. The chief immigration officer shall report monthly the number of permits granted and receipt of fees.

History: Rule 3-86, eff 7 Dec 86; amd 2003, eff 1 Apr 2003; amd 2010, eff 3 May 2010; amd Rule 2023-0005, eff Apr 10, 2023.

Amendments: 2010, subsection (c) – added “the following fee shall be charged for an entry permit and other authorization or service to facilitate entry in to American Samoa;” subsection (8) – added “national,” deleted “due,” added “or other non-compliance with entry requirements;” subsection (9) and (10) – added as indicated above; 2023, ASAC § 41.1007 subsections (a), (a)(1), (a)(3), (a)(4), (c)(7), and (d).

41.1008 Certificates of identity, stateless certificates and travel permits.

(a) Certificate of Identity.

- (1) A certificate of identity is a travel document issued under the authority of the Attorney General. No alien is eligible for a certificate of identity. A national or citizen of the United States may be issued a certificate of identity if the Attorney General or his designee is satisfied of the following matters:

- (A) The applicant has been informed and encouraged to apply for a United States passport;
- (B) The applicant’s identification is sufficiently verified through other photo identification documents or other credible evidence or sources, and conforms to photographs provided for the certificate of identity.

(C) The applicant’s certificate of birth is authentic and verified to be that of the applicant;

(D) For a minor child, a parent or legal guardian shall provide sufficient verification of identity, authorization, relationship and other proof that he/she is authorized to apply for the child’s certificate of identity for travel purposes; and

(E) Such other matters that the Attorney General or his designee shall require to confirm that the issuance of a certificate of identity to a person is appropriate.

(2) Certificates of identity may be issued for a six-month period or a one-year period. The Attorney General shall determine the period of duration of a certificate of identity. Upon expiration of a term of a certificate of identity, the holder must apply for a new certificate of identity.

(3) All applicants for a certificate of identity must provide a certified copy of a birth certificate from any state, territory, or possession of the United States. Birth certificates for United States citizens or nationals must be verified by the Attorney General or his designee prior to issuing the certificate of identity.

(4) The fee for issuing a certificate of identity shall be \$50.00 for a six-month period and \$100.00 for a one-year period.

(b) Stateless Certificate.

- (1) A stateless certificate is a travel document issued by the Attorney General to aliens only. The applicant for a stateless certificate must file an affidavit or official letter from the alien’s native or citizenship country demonstrating that the country will not issue a passport to the alien, a certified birth certificate (any birth certificate not in English must be translated into English and the translator must certify the translation), two recent photographs, and file a personal

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affidavit as to the truth of the application. The alien is responsible for securing necessary visas or approvals from other nations as required.

- (2) Aliens who have been approved by the Attorney General as American Samoans who cannot get passport from their native or citizenship country are eligible for stateless certificate on the basis of the Attorney General approval and must supply a certified birth certificate and two recent photographs.
 - (3) A stateless certificate may be issued for up to three years.
 - (4) in order for an alien with a stateless certificate to enter the United States, a United States Visa is required.
 - (5) The fee for a stateless certificate is \$75.00.
- (c) Travel Permit.
- (1) A travel permit is a travel document issued by the Attorney General to an alien who is qualified for a passport from his or her native or citizenship country, but the passport is lost, stolen, mutilated or expired and the alien is returning to his or her native country.
 - (2) An alien applying for a travel permit must have a valid alien registration card and identification as required by 41.0309 A.S.C.A., or be an alien who is legally in the Territory as a visitor pursuant to 41.0502 A.S.C.A. The alien registration card or two recent photographs and on affidavit stating the facts as to the missing passport must be presented upon application for the travel permit.
 - (3) The travel permit shall be valid for one trip only to the native country and may not be used for entrance to American Samoa.
 - (4) Any alien who has an invalid or expired alien registration card or who has overstayed may be deported pursuant to law and not permitted to return to American Samoa pursuant to 41.0613 A.S.C.A.

- (5) The fee for a travel permit is \$40.

History: Rule 3-86, eff 7 Dec 86; amd 2003, eff 1 Apr 2003; amd 2010, eff 3 May 2010.

Amendments: 2010, subsection (a)(1) – added “A national or citizen of the United States may be issued a certificate of identity if the Attorney General or his designee is satisfied of the following matters;” deleted “No person who is eligible for a United States passport as a citizen or a national shall be issued a certificate of identity except in an emergency. An emergency is defined as follows;” subsection (a)(1)(A) – added “been informed and encouraged to apply;” deleted “filed;” subsection (a)(1)(B) – added “The applicants identification is sufficiently verified through other photo identification documents or other credible evidence or sources, and conforms to photographs, provided for the certificate of identity;” deleted “The physical health of the applicant or an immediate member of the family is impaired and there is medical evidence to substantiate the health problem and travel is necessary; or;” subsection (a)(1)(C) – added “The applicant’s certificate of birth is authentic and verified to be that of the applicant;” deleted “There is a death or wedding in the applicant’s family necessitating travel; or;” subsection (a)(1)(D) – added “ For a minor child, a parent or legal guardian shall provide sufficient verification of identity, authorization, relationship and other proof that he/she is authorized to apply for the child’s certificate of identity for travel purposes;” deleted “The applicant has been approved for education or training necessitating travel;” subsection (a)(1)(E) – added (see current language);” subsection (a)(2) – deleted “In 1986 all eligible applicants may be granted a certificate of identity valid until December 31, 1986. Commencing January 1, 1987, a certificate of identity may be issued for periods of up to and not exceeding 90 days;” added (see current language); subsection (a)(3) – deleted “file;” added “provide;” added “copy of a;” deleted “American Samoa;” added “United States citizens or nationals;” deleted “office;” added “Attorney General or his designee;” subsection (a)(4) – deleted “\$35.00;” added “\$50.00 for a six-month period and \$100.00 for a one-year period;” subsection (b)(2) – deleted “board;” added “Attorney General;” deleted “board;” added “Attorney General.”

41.1009 Fees for Processing Visa Applications or Waiver of Visas

Processing of applications for visa, or waivers thereof, to enter the United States are undertaken at the Passport and Visa Section of the Department of Legal Affairs. All applications are to be sent to the American Consulate office designated by the U.S. State Department for final determination and decision. Processing of applications for waiver of visas are done only on emergency situations.

- (1) Processing fee for application U.S. Visa is \$50.00.
- (2) Processing fee for waiver of visa is \$100.00 on a regular working day; \$200.00 for an application made on a weekend or during nonworking hours.

History: Rule 3-86, eff 1 Dec 86; amd 2003, eff 1 Apr 2003; amd 2010, eff 3 May 2010.

Amendments: 2010, subsection (a) – deleted “division;” added “Section.”

41.1010 Waiver of Fees

The fees imposed in this title of immigration rules may be waived at the discretion of the Attorney General for good reason. Waiver of a fee by the Attorney General shall in writing setting forth the reason for the exercise of discretion.”

History: Eff 3 May 2010.

END OF TITLE 41 – CITIZENSHIP, ALIENAGE
AND IMMIGRATION

TITLE 42 – CRIMINAL JUSTICE

Chapters:

01 Parole

TITLE 42 – CHAPTER 01 – PAROLE

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I. GENERAL PROVISIONS AND PAROLE BOARD

42.0101 Authority.

The rules codified in this chapter are adopted pursuant to authority granted in 4.1002 A.S.C.A.

History: Rule 6-75, eff 14 Jul 75. § 401.

42.0102 Powers of the parole board.

The parole board has the power:

- (1) to determine date of parole eligibility based on applicable statute and the sentence of the court;
- (2) to parole prisoners at its discretion in accordance with prevailing statutes and this chapter;
- (3) to provide the manner and conditions for the supervision of paroled prisoners;
- (4) to issue warrant for retaking of parole violators;
- (5) to modify the manner and conditions of supervision of paroled prisoners;
- (6) to revoke parole; and
- (7) to parole prisoners whose parole has been revoked and to provide the manner and conditions for the supervision of reparaoled prisoners.

History: Rule 6-75, eff 14 Jul 75, § 402.

42.0103 Meetings-Quorum.

- (a) The parole board shall meet when the chairman deems it necessary or on the written request to the chairman of at least 2 members. Hearings shall be conducted as required by this chapter.
- (b) The presence of 3 members shall constitute a quorum. A vote of the majority of board members present is required to decide any issue.

History: Rule 6-75, eff 14 Jul 75, 5 403(b).

42.0104 Administrative duties of chairman, parole officer.

The chairman of the board shall be responsible for preparation and submission of records and reports and be generally responsible for the administrative work of the board. The parole officer shall provide assistance as required by the chairman.

History: Rule 6-75, eff 14 Jul 75, § 404.

II. PAROLE PROCEDURE

42.0110 Application eligibility waiver.

A prisoner desiring to apply for parole shall execute an application for parole and such other forms as are prescribed by the board. Such forms shall be provided to prisoners eligible for parole no less than 15 days before the date of eligibility. Failure to execute such forms may be considered a waiver of parole eligibility.

History: Rule 6-75, eff 14 Jul 75, § 405.

42.0111 Eligibility determination and notice.

Determination that a prisoner has completed one-third of his sentence shall be made from the confinement order. The prison warden shall give the chairman of the board and the prisoner no less than 15 days written notice of the prisoner's date of eligibility.

History: Rule 6-75, eff 14 Jul 75, § 406.

42.0112 Recommendations and report-Hearing notice.

- (a) The prison warden shall be responsible for forwarding the application to the parole officer along with his comments on the merits of the application. The parole officer shall prepare a background report. He shall then forward the application with the warden's comments, his own comments on the merits of the application, and his background report to the chairman of the board.
- (b) The chairman shall then set a hearing date, notify all parties concerned, and send each member of the board copies of the application, background report and comments by the warden and parole officer prior to the hearing.

History: Rule 6-75, eff 14 Jul 75, § 407.

42.0113 Hearing-Appearance of applicant.

The applicant for parole shall have the right to personally appear before the board to state his case.

History: Rule 6-75, eff 14 Jul 75, § 408.

42.0114 Grant of parole-Factors in decision making.

- (a) The grant of parole rests in the discretion of the board. In general it is granted when, in the judgment of the board, a prisoner who has made a satisfactory adjustment and is otherwise eligible will avoid further violation of law and when the factors which will affect him and his dependents upon release assure adequate public security. These factors vary in every case. The board evaluates each case on its merits and may grant or deny parole or continue the case for further hearing.
- (b) The board may consider the following factors and others deemed relevant, at its discretion, in its decisions on parole applications:
 - (1) Sentence:
 - (A) Type of sentence;
 - (B) Length of sentence; and
 - (C) Recommendation of judge, attorney general, and other responsible officials;
 - (2) Facts and circumstances of the offense:
 - (A) Mitigating and aggravating factors; and
 - (B) Activities following arrest and prior to confinement, including adjustment on bond or probation, if any;
 - (3) Prior criminal record:
 - (A) Nature and pattern of offenses;
 - (B) Adjustment of previous probation, parole, and confinement; and
 - (C) Warrants for parole violations;
 - (4) Changes in motivation and behavior:

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- (A) Changes in attitude toward self and others;
 - (B) Reasons underlying changes; and
 - (C) Personal goals and description of personal strength of resources available to maintain motivation for law-abiding behavior;
- (5) Personal and social History:
- (A) Family and marital;
 - (B) Intelligence and education;
 - (C) Employment and military experience;
 - (D) Leisure time;
 - (E) Religion; and
 - (F) Physical and emotional health;
- (6) Institutional experience:
- (A) Program goals and accomplishments in these areas:
 - (I) Academic;
 - (II) Vocational education, training, or work assignments;
 - (III) Recreation and leisure time use;
 - (IV) Religion; and
 - (V) Therapy; and
 - (B) General adjustment:
 - (I) Interpersonal relationships with staff and inmates; and
 - (II) Physical and emotional health, and treatment;
- (7) Community resources, including release plans:
- (A) Residence: live alone, with family or others;
 - (B) Employment, training, or academic education; and
 - (C) Special needs and resources to meet them;
- (8) Use of scientific data and tools:
- (A) Psychological and psychiatric evaluations;
 - (B) Statistical data; and
 - (C) Standardized tests;
- (9) Written or oral statements or recommendations by:
- (A) Prisoner;
 - (B) Parole officer; and
 - (C) Any other person; and
- (10) Comments by board members at parole hearing:
- (A) Impressions formed by members at the hearing; and
 - (B) Impressions based on personal familiarity with prisoner or other relevant data.

History: Rule 6-75, eff 14 Jul 75, § 409.

42.0115 Decision-Notice.

Any decision to parole or refuse parole shall be in writing with reasons for the decision stated therein. The applicant shall be notified and a copy of the decision delivered to him.

History: Rule 6-75. eff 14 Jul 75, § 410.

42.0116 Review after denial.

- (a) Where initial application for parole has been denied, a prisoner's case may be subsequently reviewed by the board. A request for a review will be granted when the chairman determines that such review is justified on the basis of receipt of sufficiently significant information which was not known to the board at the time of any previous consideration.
- (b) In the absence of such significant information, the board may call for review at any time when they determine such review is merited by the circumstances. In all cases, the board must

review decisions at least once each year after a denial.

History: Rule 6-75, eff 14 Jul 75, § 411.

42.0117 Release plan-Preparation.

Upon determination that parole is to be granted, the board shall prepare a release plan for the particular individual, which shall include the manner and conditions of supervision on parole. The plan shall be prepared by the board after the hearing and with consultation of the parole officer.

History: Rule 6-75, eff 14 Jul 75, § 412.

42.0118 Release plan-Elements.

The following elements shall be considered any release plan, but this enumeration shall not be exclusive to other elements the board deems appropriate:

- (a) Date of release;
- (b) Any travel restrictions imposed upon parolee;
- (c) Dates the parolee is to report to the parole officer and the supervision and reporting required of such officer;
- (d) Designation of any advisor other than the parole officer, who shall be a responsible citizen living in or near the community in which the parolee will reside and be available to the parolee;
- (e) Reports required of the parolee relative to his own conduct;
- (f) Requirements of the board pertaining to legitimate employment of the parolee;
- (g) Assurances of necessary care available to the parolee for medical or other demonstrable problems of any nature requiring special attention;
- (h) General restrictions as to the conduct of the parolee; i.e., consumption of alcohol or drugs, future criminal activity;
- (i) Deportation from American Samoa and prohibition for reentry; and
- (j) Payment of any fine the court may have imposed and/or any restitution of any property damaged or stolen during commission of a crime.

History: Rule 6-75, eff 14 Jul 75, § 413.

42.0119 Certificate of release.

Upon approval of the release plan, the board shall issue a certificate of release, which shall state therein the release date, the conditions of parole and other relevant aspect of the release plan, and such instructions to the prisoner as the board considers appropriate. The certificate shall be signed by the chairman and shall provide the authority for the prison warden to release the prisoner from confinement. The certificate shall state the date parole terminates which shall be no later than the maximum term for which he was originally sentenced. A copy of the certificate shall be delivered personally to the prisoner by the prison warden.

History: Rule 6-75, eff 14 Jul 75, § 414.

42.0120 Release.

When an effective release date has been set by the board, release on that date shall be conditioned upon continued good conduct by the prisoner. The board may, on its own motion, reconsider any case prior to release and may reopen and advance, postpone, or deny a parole which has been granted. The board may also add to or modify the conditions of parole.

History: Rule 6-75, eff 14 Jul 75. § 415.

42.0121 Release plan modification.

If any time during the period of the parole it appears to the board, from the reports of the parole officer or from other sources, that the certificate of release should be modified, the board may consider such modification upon consultation with the parole officer and make such modification as it deems necessary. A copy of the modification shall be delivered personally to the parolee by the parole officer.

History: Rule 6-75. eff 14 Jul 75, § 416.

42.0122 Parole officer-Appointment and supervision.

There shall be at least 1 parole officer on the staff of the department of legal affairs, who shall be appointed with the approval of the board and be supervised by the attorney general.

History: Rule 6-75, eff 14 Jul 75, § 417.

42.0123 Parole officer-Responsibility.

- (a) Supervision of all prisoners under parole is invested in the parole officer. The parole officer shall make monthly reports to the attorney general, pertaining to the conduct of each parolee based upon the parole officer's meetings with the parolee and information gathered from other sources in the community. The report shall be forwarded to the chairman of the parole board, and when the report contains items that should come to the attention of the board, the chairman shall discuss the same with the board.
- (b) When the parole officer is of the opinion that it is necessary to enhance the possibilities of a successful supervision period, he shall request the board to modify the terms of the certificate of release.
- (c) If the parolee fails to abide by any of the conditions of the certificate of release, the parole officer shall notify the board or any member thereof, of such violation.

History: Rule 6-75, eff 14 Jul 75. § 418.

42.0124 Misrepresentation by parolee- Parole revocation.

All grants of parole are predicated on the applicant's good faith and frankness. If, after release on parole, evidence comes to the attention of the board that the parolee has withheld or wilfully concealed material information, the board may act to revoke the parole granted according to procedures of this chapter.

History: Rule 6-75, eff 14 Jul 75. § 419.

III. VIOLATION

42.0130 Reincarceration upon warrant authorized.

If a parolee violates any conditions under which he was released, he may be reincarcerated at the territorial correctional facility upon authority of a warrant issued by a member of the parole board.

History: Rule 6-75, eff 14 Jul 75, § 420.

42.0131 Warrant issuance and execution.

- (a) When satisfactory information of a violation of parole is presented to any member of the parole board such member may sign a warrant for

retaking of the parole, provided the maximum time of parole has not expired.

- (b) Any police officer or the parole officer may serve the warrant and return the parolee to the territorial correctional facility. The executed warrant shall be immediately returned to the chairman of the parole board.

History: Rule 6-75, eff 14 Jul 75, § 421.

42.0132 Preliminary interview after retaking.

- (a) Within 48 hours of a retaking, the parole officer shall conduct a preliminary interview to ascertain if the parolee denies or admits the alleged parole violation.
- (b) The parolee shall be advised at the beginning of the interview that he may be represented by an attorney or other counsel throughout the interview and may have voluntary witnesses testify on his behalf but not at the expense of the government. The interview shall be continued for a reasonable time if the parolee desires the representation of an attorney or other counsel or to obtain witnesses.
- (c) The parole officer shall submit a summary or digest of the preliminary interview to the chairman of the board immediately upon completion so that the proceedings required by 42.0133, 42.0134, and 42.0135 of this chapter can be undertaken. The summary or digest shall include the parole officer's recommended disposition to the board.

History: Rule 6-75, eff 14 Jul 75. § 422.

42.0133 Revocation-Hearing-Notice.

Within a reasonable time after the parolee is taken into custody and after receipt of the parole officer's summary or digest of the preliminary interview, parole board shall hold a hearing to determine if parole should be revoked. The requirements of the hearing shall be:

- (a) The hearing shall be preceded by written notice to the parolee which advises the parolee of the alleged violations.
- (b) At all times during the hearing, the parolee shall have the right to be personally present and to be

represented by an attorney other counsel but not at the expense of the government.

- (c) The hearing shall be continued for a reasonable time if the parolee desires the representation of an attorney or other counsel.
- (d) Before evidence is taken, the parolee shall be asked if he admits or denies the alleged violations.
- (e) The evidence against the parolee shall be disclosed to him and he shall have the right to confront and cross-examine witnesses against him unless the board finds good cause for not allowing confrontation.
- (f) The parolee has the right to be heard in person and to have voluntary witnesses testify and present other evidence on his behalf, but not at the expense of the government.
- (g) The hearing shall be succeeded by a written statement by the board, delivered personally to the parolee, as to the evidence relied upon and reasons for revoking parole if the parole is revoked.

History: Rule 6-75, eff 14 Jul 75, § 423.

42.0134 Conviction-based revocation-Scope of hearing.

If the sole parole violation alleged is the conviction of a crime, the scope of the hearing shall be limited to whether the conviction amounts to a violation of parole.

History: Rule 6-75, eff 14 Jul 75, § 424.

42.0135 Admitted violation.

In the instances where a parolee admits the parole violation charge filed against him, there shall be no need for an evidentiary hearing. The board shall meet solely to decide what action to take on the violation.

History: Rule 6-75, eff 14 Jul 75, § 425.

42.0136 Options of board.

On the basis of the matters presented at the hearing, the board may reinstate parole, revoke, and terminate the order of parole, or modify the terms and conditions thereof. Under such circumstances, the

prisoner may be required to serve all or any part of the remainder of the term for which he was sentenced.

History: Rule 6-75, eff 14 Jul 75, § 426.

42.0137 Unexpired term of imprisonment.

The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to physical custody of the attorney general under the warrant for retaking of the parolee, and the time the prisoner was on parole shall not diminish the time he was sentenced to serve.

History: Rule 6-75, eff 14 Jul 75, § 427.

IV. REMITTANCE, COMMUTATION, REPRIEVE, PARDON

42.0140 Power of Governor-Authority.

The Governor has the sole power to remit fines and forfeitures, commute sentences, and grant reprieves and pardons after conviction for offenses against the laws of American Samoa in accordance with Section 9 of Article IV of the Constitution of American Samoa, 1967, as amended.

History: Rule 6-75, eff 14 Jul 75, § 428. f

42.0141 Application-Action initiation.

- (a) All applications for remittance, commutation, reprieve or pardon must be directed to the Governor. If the board receives an application therefor from a petitioner directly, it shall be returned to him with written instructions to file the same directly with the Governor. A copy of the letter will be sent to the Governor.
- (b) Only when directed by the Governor either to investigate or investigate and make recommendations concerning an application for remittance, commutation, reprieve, or pardon shall the board take any such action thereon.

History: Rule 6-75, eff 14 Jul 75, § 429.

42.0142 Investigation, report, and recommendation.

If the board is directed to consider an application for remittance, commutation, reprieve, or pardon, it may direct the parole officer-to conduct further investigation and prepare a background report. The board may also hold a hearing and allow the applicant

to appear personally to state his case. The board shall submit in writing to the Governor the majority report and, if any, minority report of its findings and recommendations. Unless otherwise directed by the Governor, the reports shall be submitted within 60 days of the referral to the board.

History: Rule 6-75, eff 14 Jul 75, § 430.

END OF TITLE 42 – CRIMINAL JUSTICE

TITLE 43 – CIVIL REMEDIES AND PROCEDURES

Chapters:

- 01 Administrative Claims Under the Government Tort Liability Act

TITLE 43 – CHAPTER 01 – ADMINISTRATIVE CLAIMS UNDER THE GOVERNMENT TORT LIABILITY ACT

Sections:

- 43.0101 Definitions.
43.0102 Scope of rules.
43.0103 Administrative claim-When presented.
43.0104 Administrative claim-Who may file.
43.0105 Administrative claim-Evidence and information to be submitted.
43.0106 Investigation and examination.
43.0107 Final denial of claim.
43.0108 Action on approved claim.

43.0101 Definitions.

As used in this chapter:

- (a) “Employees of the government” includes officers and employees of any government agency, and persons acting in behalf of a government agency in an official capacity, temporarily, whether with or without compensation.
- (b) “Government agency” includes the executive departments, boards and commission of the government, but does not include any contractor with the government.

History: Rule 4-85, eff 30 Dec 85.

43.0102 Scope of rules.

These rules shall apply only to claims asserted under the Government Tort Liability Act of American Samoa, 43.1201 A.S.C.A., et seq., accruing on or after January 1, 1986, for money damages against the American Samoa Government for injury to or loss of property, or personal injury or death caused by the alleged negligent or wrongful act or omission of any employee or the government while acting within the scope of his or her office or employment.

History: Rule 4-85, eff 30 Dec 85.

43.0103 Administrative claim-When presented.

- (a) For purposes of the provisions of 43.1205 A.S.C.A., a claim shall be deemed to have been presented when the Attorney General receives from a claimant, his or her duly authorized agent, or legal representative, a written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident.
- (b) A claim presented in compliance with subsection (a) of this section may be amended by the claimant at any time prior to the final action of the Attorney General or prior to the exercise of the claimant’s option under 43.1205 (a) A.S.C.A. Amendments shall be submitted in writing and signed by the claimant or his/her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Attorney General shall have three months in which to make a formal disposition of the claim as amended and the claimant’s option under 43.1205(a) A.S.C.A., shall not accrue until three months after the filing of an amendment.

History: Rule 4-85, eff 30 Dec 85.

43.0104 Administrative claim-Who may file.

- (a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent or legal representative.
- (b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.
- (c) A claim based on death may be presented by the executor or administrator of the decedent’s estate, or by any other person legally entitled to assert such a claim in accordance with applicable Territory law.
- (d) A claim for loss wholly compensated by insurer with the rights of a subrogee must be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear or jointly.
- (e) A claim presented by an agent or legal representative shall be presented in the name

of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

History: Rule 4-85, eff 30 Dec 85.

43.0105 Administrative claim-Evidence and information to be submitted.

All claims are required to present in writing the circumstances of the incident(s), including, but not limited to, date, time, place, names and addresses of parties involved, names and addresses of witnesses, and a statement of the alleged negligent or wrongful act or omission of the government employee while acting within the scope of his or her office or employment. In addition to that information, the following evidence and information shall be submitted when presented pursuant to 43.0103 A.S.C.A:

- (a) Death: In support of a claim based on death, the claimant shall be required to submit the following evidence or information:
 - (1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.
 - (2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings, if any, and the duration of decedent's last employment or occupation.
 - (3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.
 - (4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of death.
 - (5) Decedent's general physical and mental condition before death.
 - (6) Itemized bills for medical and burial expenses incurred by reason of the

incident causing death, or itemized receipts of payment for such expenses.

- (7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.
 - (8) Any other evidence or information which may have a bearing on either the responsibility of the American Samoa Government for the death or the damages claimed.
- (b) Personal Injury. In support of a claim for personal injury, including pain and suffering, the claimant shall be required to submit the following evidence or information:
- (1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the American Samoa Government. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request, provided that he has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the American Samoa Government any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.
 - (2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts or payment for such expenses.
 - (3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatments.
 - (4) If a claim is made for loss of time from employment a written statement from his

employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

- (5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amounts of earnings actually lost.
 - (6) Any other evidence or information which may have a bearing on either the responsibility of the American Samoa Government for the personal injury or the damages claimed.
- (c) Property Damage. In support of a claim for injury to or loss of property, real or personal, the claimant shall be required to submit the following evidence or information:
- (1) Proof of ownership;
 - (2) A detailed statement of the amount claimed with respect to each item of property;
 - (3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs;
 - (4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical;
 - (5) Any other evidence or information which may have a bearing on either the responsibility of the American Samoa Government for the injury to or loss of property or the damages claimed.

History: Rule 4-85, eff 30 Dec 85.

43.0106 Investigation and examination.

The Attorney General may request any department or agency of the American Samoa Government to investigate a claim filed under 43.1205 A.S.C.A., or to conduct a physical examination of a claimant and provide a report of the investigation or physical examination.

History: Rule 4-85, eff 30 Dec 85.

43.0107 Final denial of claim.

- (a) Final denial of an administrative claim shall be in writing and sent to the claimant; his/her attorney, or legal representatives by certified or

registered mail. The notification of final denial may include a statement that, if the claimant is dissatisfied with the agency action, (s)he may file suit in the High Court of American Samoa, trial division, not later than two years after the claim accrues.

- (b) Prior to the commencement of suit and prior to the expiration of the three month period provided in 43.1205(a) A.S.C.A., a claimant, his/her duly authorized agent, or legal representative, may file a written request with the Attorney General for reconsideration of a final denial of a claim under subsection (a) of this section. Upon the timely filing of a request for reconsideration the Attorney General shall have three months from the date of filing in which to make a final disposition of the claim and the claimant's option under 43.1205(a) A.S.C.A., shall not accrue until three months after the filing of a request for reconsideration. Final action by the Attorney General on a request for reconsideration shall be effected in accordance with the provisions of subsection (a) of this section.

History: Rule 4-85, eff 30 Dec 85.

43.0103 Action on approved claim.

- (a) Payment of any claim approved hereunder shall be contingent upon claimant's execution of a claims settlement agreement. When a claimant is represented by an attorney, the voucher for payments shall designate both the claimant and the attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.
- (b) Acceptance by the claimant, his/her agent, or legal representative, of any award, compromise, or settlement made pursuant to the provisions of 43.1205(b), 43.1210, 43.1211(c), 43.1212, and 43.1213 A.S.C.A., shall be final and conclusive on the claimant, his/her agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the American Samoa Government and against any employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter.

History: Rule 4-85 eff 30 Dec 85.

END OF TITLE 43 – CIVIL REMEDIES AND
PROCEDURE