

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R7-1-714 New Section
2. **The specific authority for the rulemaking, including both the authorizing statute and the statutes the rules are implementing:**
Authorizing statute: A.R.S. 15-1424.
Implementing statute: A.R.S. 15-1424.
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2265, July 16, 1999.
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Thomas J. Saad
Address: 3225 North Central Ave., Suite 1220
Phoenix, AZ 85012
Telephone: (602) 255-4037
Fax: (602) 279-3464
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
Establishes guidelines whereby a community college district may offer credit courses that can be accessed by individuals at non-designated sites ie. Internet or correspondence courses. Provides criteria for granting credit and for claiming state aid. Specifically prohibits the payment of state aid for credit courses offered out of state.
6. **A reference to any study that the agency proposes to rely on its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
The new section will not diminish the authority of college districts. They have been operating under similar, but less formal, provisions.
8. **The preliminary summary of the economic, small business, and consumer impact:**
The proposed rule will not adversely impact small business or consumers.

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9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Thomas J. Saad
Address: 3225 N. Central Ave., Suite 1220
Phoenix, AZ 85012
Telephone: (602) 255-4037
Fax: (602) 279-3464

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

Oral Proceedings/public hearings is scheduled as follows:

Date: September 17, 1999
Time: 1 p.m.
Location: 1700 West Washington, Room 200
Phoenix, AZ

11. Any other matters prescribed by statute that are applicable to the specific agency:

None

12. Incorporations by reference and their location in the rules:

None

13. Full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

Section

R7-1-714. Providing Community College Credit Courses at a Distance via Methods that can be Accessed by Individuals at Nondesignated Receive Sites

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

R7-1-714. Providing Community College Credit Courses at a Distance via Methods that can be Accessed by Individuals at Nondesignated Receive Sites

A. A community college district (offering district) may provide at a distance credit courses that can be accessed by individuals at non-designated receive sites, such as Internet or correspondence courses. Prior to the delivery of such courses, the offering district shall notify the State Board of its plans to offer such courses, including the courses to be offered and the anticipated enrollments.

B. For all services covered by this rule:

- 1. The State Board shall approve tuition and fees for students enrolled in credit courses.**
- 2. Credit may be awarded by the district on curriculum approved by the State Board.**
- 3. State Aid may be claimed for credit courses delivered to students located in Arizona. State Aid may not be claimed for courses delivered to students outside Arizona.**
- 4. An annual report for the previous fiscal year shall be submitted to the State Board by September 1 of each year. The annual report shall include for each mode of delivery, the mode of delivery, the courses offered, in-state enrollment, and out-of-state enrollment.**

C. The offering district shall inform the State Board of any changes in the scope of services authorized pursuant to this rule. Upon a change in the plan or 5 years from the most recent approval of the plan by the State Board, whichever occurs 1st, the offering district shall resubmit the plan for State Board review and approval.

NOTICE OF PROPOSED RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

PREAMBLE

1. Sections Affected

Rulemaking Action

R13-5-01	Repeal
R13-5-02	Repeal
R13-5-03	Repeal
R13-5-04	Repeal
Article 2	Repeal
R13-5-10	Repeal
R13-5-11	Repeal
Article 3	Repeal
R13-5-15	Repeal
Article 4	Repeal
R13-5-20	Repeal
Article 5	Repeal
R13-5-25	Repeal
R13-5-26	Repeal
R13-5-27	Repeal
R13-5-28	Repeal
Article 6	Repeal
R13-5-30	Repeal
R13-5-31	Repeal
R13-5-32	Repeal
R13-5-33	Repeal
R13-5-34	Repeal
R13-5-35	Repeal
R13-5-36	Repeal
Article 7	Repeal
R13-5-40	Repeal
R13-5-41	Repeal
R13-5-42	Repeal
R13-5-43	Repeal
Article 8	Repeal
R13-5-45	Repeal
R13-5-46	Repeal
R13-5-47	Repeal
R13-5-48	Repeal

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 41-1830.12(A)

Implementing statutes: A.R.S. §§ 41-1830.11, 41-1830.12, 41-1830.13, 41-1830.14, and 41-1830.15

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 3 A.A.R. 2932, October 17, 1997.

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Capt. C. H. Johnston, Business Manager

Address: Law Enforcement Merit System Council
P.O. Box 6638
Phoenix, Arizona 85005-6638

Telephone: (602) 223-2286

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Fax: (602) 223-2096

5. **An explanation of the rules, including the agency's reasons for initiating the rules:**
The Law Enforcement Merit System Council (Council) is proposing the repeal of its present rules and concurrently replacing the old rules with new rules. The present rules were adopted in 1968. They are outdated and difficult to administer. As agreed during the 5 year review of these rules, the Council proposes to adopt new rules conforming to contemporary rulemaking policies, format, and style.
6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
Not applicable.
7. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
8. **The preliminary summary of the economic, small business, and consumer impact:**
Repeal of the Council's out-dated administrative rules will not result in any economic, small business or consumer impact.
9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Capt. C.H. Johnston, Business Manager
Address: Law Enforcement Merit System Council
P.O. Box 6638
Phoenix, Arizona 85005-6638
Telephone: (602) 223-2286
Fax: (602) 223-2096
10. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**
Following submission to the Secretary of State and the rules being published in the Arizona Administrative Register, written comments will be received at the address listed in item #9. A public hearing is scheduled for September 22, 1999 at the Department of Public Safety, 2nd Floor Conference Room, 2102 W. Encanto Boulevard. This meeting will begin at 10 a.m.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Capt. Coy Johnston, Law Enforcement Merit System Council, voice telephone number (602) 223-2286, or P.O. Box 6638, Phoenix, Arizona 85005, or TDD number if appropriate. Requests should be made as early as possible to allow time to arrange the accommodation.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
12. **Incorporations by reference and their location in the rules:**
Not applicable
13. **The full text of the rules follows:**

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

ARTICLE 1. GENERAL PROVISIONS

Sections

- R13-5-01. ~~Definitions~~ Repealed
R13-5-02. ~~General provisions~~ Repealed
R13-5-03. ~~Scope~~ Repealed
R13-5-04. ~~Merit System Council~~ Repealed

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~~ARTICLE 2. INVESTIGATION AND HEARINGS~~ Repealed

Sections
R13-5-10. ~~Investigation and hearings~~ Repealed
R13-5-11. ~~General powers and duties~~ Repealed

~~ARTICLE 3. CLASSIFICATION~~ Repealed

Sections
R13-5-15. ~~Classification~~ Repealed

~~ARTICLE 4. COMPENSATION~~ Repealed

Sections
R13-5-20. ~~Compensation~~ Repealed

~~ARTICLE 5. GENERAL ENTRANCE AND PROMOTION PROVISIONS~~ Repealed

Sections
R13-5-25. ~~General entrance and promotion provisions~~ Repealed
R13-5-26. ~~Examinations~~ Repealed
R13-5-27. ~~Promotion~~ Repealed
R13-5-28. ~~Veteran's preference~~ Repealed

~~ARTICLE 6. GENERAL APPOINTMENT PROVISIONS~~ Repealed

Sections
R13-5-30. ~~General appointment provisions~~ Repealed
R13-5-31. ~~Limited term or provisional~~ Repealed
R13-5-32. ~~Intermittent~~ Repealed
R13-5-33. ~~Emergency~~ Repealed
R13-5-34. ~~Re-employment~~ Repealed
R13-5-35. ~~Probationary period~~ Repealed
R13-5-36. ~~Duration appointments~~ Repealed

~~ARTICLE 7. GENERAL EMPLOYEE CONDUCT PROVISIONS~~ Repealed

Sections
R13-5-40. ~~General employee conduct provisions~~ Repealed
R13-5-41. ~~Report of employee performance~~ Repealed
R13-5-42. ~~Annual leave~~ Repealed
R13-5-43. ~~Transfers~~ Repealed

~~ARTICLE 8. GENERAL PERSONNEL PROVISIONS~~ Repealed

Sections
R13-5-45. ~~General personnel provisions~~ Repealed
R13-5-46. ~~Layoff and demotion~~ Repealed
R13-5-47. ~~Disciplinary proceedings~~ Repealed
R13-5-48. ~~Retirement~~ Repealed

ARTICLE 1. GENERAL PROVISIONS

R13-5-01. Definitions

Unless the context requires otherwise, the definitions hereinafter set forth govern the construction of these rules:

1. "Agency". Includes "department", "board", "office", "authority", "commission", and every other governmental unit.
2. "Agency head". The Director of the Department of Public Safety.
3. "Appointment". The offer to and the acceptance by a person for and of the Department of Public Safety in accordance with these rules.
4. "Armed Forces". The United States Air Force, Army, Navy, Marine Corps, Army and Navy Nurse Corps, and the United States Coast Guard.
5. "A.R.S.". Arizona Revised Statutes.
6. "Business manager". The business manager of the Council provided in these rules.
7. "Chairman". The chairman of the Council.
8. "Class" or "rank". A group of positions sufficiently similar with respect to duties and responsibilities that the same title may be reasonably and fairly used to designate each position allocated to the class and that substantially the same

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- tests of fitness may be used and that substantially the same minimum qualifications may be required and that the same schedule of compensation may be made to apply with equity.
9. "Council". The Arizona Law Enforcement Merit System Council created by Title 28, Chapter 2, Article 2, Section 28-235, Arizona Revised Statutes.
 10. "C.S.A.". The Constitution of the state of Arizona.
 11. "Department". The Department of Public Safety.
 12. "Disabled veteran". Any veteran as defined herein who is currently declared by the United States Veterans Administration to be ten percent or more disabled as a result of service in the armed forces. Proof of such disability shall be deemed conclusive if it is on record in the United States Veterans Administration.
 13. "Duration employment". An employment during time of war or during an emergency in connection with the National Defense, which employment is subject to termination and other conditions as prescribed by these rules.
 14. "Duration examination". An open competitive examination or promotional examination held for the express purpose of providing a list of persons available for duration employment. Employment lists resulting from duration examinations can be used only in making appointments for duration employment.
 15. "Electors". Any person meeting the requirements set forth in A.R.S. § 16-101, 16-104, and C.S.A. Article 7.
 16. "Eligible list". A list of persons who have been examined in open competitive examination and are eligible for certification for a specific class.
 17. "Emergency appointment". An appointment made during an actual emergency to prevent the stoppage of public business.
 18. "Employee". Includes every commissioned employee and noncommissioned employee subject to the Arizona Law Enforcement Merit System and these rules and regulations and legally holding a position in accordance with Council rules.
 19. "Employee, cadet". A probationary employee in training for the position of a commissioned officer.
 20. "Employee, commissioned". An employee who has been invested with the authority of a public officer and a peace officer.
 21. "Employee, emergency". An employee holding a position under emergency appointment.
 22. "Employee, limited term". An employee whose appointment as a result of re-employment or certification from an employment list shall not exceed the probationary period for the class to which he is appointed.
 23. "Employee, noncommissioned". One who has not been commissioned.
 24. "Employee, permanent". An employee who has permanent status.
 25. "Employee, provisional". An employee holding a position under provisional appointment.
 26. "Gender". The masculine gender includes the feminine and neuter.
 27. "General re-employment list". A list established for the re-employment of persons in a particular class in which the persons were previously employed.
 28. "Improper political activity". Except in the exercise of his right to vote or petition or to privately express his opinion, improper political activity by an employee shall consist of, but is not limited to, the following:
 - a. Directly or indirectly giving, soliciting, or receiving any assessment, subscription, contribution, or political service, whether voluntary or involuntary, for a person who holds or is a nominee for or seeking the nomination for or an appointment to any public office.
 - b. Directly or indirectly soliciting or receiving the use of or the promise to use any official authority, whether then possessed or merely anticipated, to secure, retain or affect any position provided for by the Council.
 - c. Receipt of politically influential or authoritative aid by any person in securing any position, nomination, confirmation, promotion, increase in salary, or change of position or working condition.
 - d. Membership in any national, state or local committee of a political party or of a partisan political club.
 - e. Candidacy for nomination or election to any paid public office.
 - f. Participation in the management or affairs of any political party or in any political campaign.
 29. "Limited term list". An eligible list established for use exclusively in making limited term appointments.
 30. "May". Permissive.
 31. "Military leave". The leave of absence status of a permanent employee or probationer who leaves a position to serve in the armed forces of the United States or of this state in time of national emergency or state military emergency or for military training and who has the right under statutes (A.R.S. § 38-297, 38-298, or 38-610) relating to re-employment of persons after military service to return to his position.
 32. "Member". Any member of the Merit System Council.
 33. "National emergency". Any period in which the United States is at war.
 34. "Number". The singular number includes the plural; and the plural includes the singular.
 35. "Oath". Includes affirmation or declaration.
 36. "Office". Any position created by the legislative branch of the government, either directly or by necessary implication.

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37. "Office" or "public officer". The incumbent of any office, member of any board or commission, or his deputy or assistant exercising the powers and duties of the officer, other than clerks or mere employees of the officer.
38. "Public officer" or "peace officer". A commissioned officer of the Department of Public Safety.
39. "Patrol". The Arizona Highway Patrol Division of the Department of Public Safety.
40. "Permanent status". The status of an employee who is lawfully retained in his position after the completion of the probationary period provided by these rules.
41. "Person". Includes any person, firm, association, organization, partnership, business trust, corporation or company.
42. "Personal qualifications". Includes all such personality traits and personal, moral and physical characteristics as are necessarily comprehended by the minimum qualifications established for the class.
43. "Position". An office or employment in the Department (whether occupied or vacant) involving the performance of duties or services by an individual.
44. "Probationary status". The status of an employee who has been certified and appointed from an employment list, or who has been re-employed after resignation, or who has been transferred or demoted but who has not completed the probationary period provided by these rules.
45. "Probationer". An employee who has probationary status.
46. "Recognized military service". Full-time service by a person in the armed forces during the national emergency or a state military emergency as defined under Arizona Law Enforcement Merit System Council rules.
47. "Rehabilitation". Restoration of veterans declared to be ten percent or more disabled, either physically or mentally.
48. "Resident". Any person meeting the requirements set forth in A.R.S. § 16-925.
49. "Rule". Any rule, or amendment thereto, of practice and procedure supplementary to but not inconsistent with the provisions of the Arizona Law Enforcement Merit System.
50. "Salary" or "wage". The amount of money or credit received as compensation for service rendered exclusive of mileage, traveling allowances, and other sums received for actual and necessary expenses incurred in the performance of the state's business.
51. "Secretary". The secretary of the Merit System Council.
52. "Section promotional list". A list of persons eligible for certification for a specific class resulting from a promotional examination for a particular section, district or functional group.
53. "Service wide promotional list". A list of persons eligible for certification for a specific class resulting from a promotional examination as provided for under Arizona Law Enforcement Merit System Council rules.
54. "Shall". Mandatory.
55. "State". The state of Arizona.
56. "State military emergency". An emergency declared and terminable by the governor by proclamation during, but not limited to, such times as the United States is conscripting personnel for service in the armed forces.
57. "Tense". The present tense includes the past and future tenses; and the future includes the present.
58. "Veteran". Any person who has served full time in the armed forces or the Arizona National Guard and who meets the requirements of the United States Veterans Administration and who has been discharged or released under conditions other than dishonorable.

R13-5-02. General provisions

- A. Delegation of responsibility: Whenever a power is granted or a duty imposed upon the agency head by these rules, the power may be exercised or the duty performed by a deputy or assistant of the agency head or by a person authorized by him, unless it is expressly otherwise provided.
- B. Reports: The agency head shall report promptly to the Council such information as the Council may require in connection with each appointment, separation from service, or other change in position or salary, or other matters affecting the status of positions or the performance of duties of employees in his agency, and all such reports shall be prepared in the manner and form prescribed.
- C. Information: Information given to the Council by any person shall not be open to inspection except under conditions prescribed by Council rule. Personnel files maintained by the Council shall be open to the governor of this state, members of the Council, the agency head, the Business Manager, and other persons designated by the Council.
- D. Service of notice: Whenever any notice, paper, or document, except a subpoena, is directed to be given to or served upon any person or agency, such notice, paper, or document may be personally served or it may be served by mail to the last known residence or business address of the addressee. Unless otherwise specifically provided by statute, the giving of notice of matters to be heard or considered by the Council shall be governed by Council rule.
- E. Service by mail: Service by mail of the charges in a disciplinary proceeding, the notice of an employee's suspension or discharge, and the notice of a probationer's rejection is made by the enclosure of such charges or notice in a sealed envelope, addressed to the last known address of the person to be served, registered with return receipt requested, and the depositing of it in the United States mail with postage fully prepaid. Service is complete on mailing. Service by mail of any other notice, paper, or document is made in the manner provided by statute. Proof of service, either personal or by mail, shall be made by affidavit.

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- F. Reference to law and rules: Whenever reference is made to any portion of these rules or of any law of this state, the reference applies to all amendments and additions now or hereafter made.
- G. Validity and separation: If any provision of these rules or the application thereof to any person or circumstances is held invalid, the remainder of the rules or the application of such provision to other persons or circumstances shall not be affected thereby.

R13-5-03. Scope

Positions covered: The positions covered shall apply as provided for in A.R.S. § 28-235 and as outlined under the Merit System Council rules and regulations as provided for in A.R.S. § 28-235.

R13-5-04. Merit System Council

- A. Employees: The Council shall select and the agency head shall appoint and provide for the compensation of any personnel as is necessary to carry out and perform the powers, duties, purposes, functions and jurisdictions of the Council.
- B. Business Manager: The Council shall select and the Director of the Department of Public Safety shall appoint a Business Manager who shall be an officer of the Department of Public Safety but not a member of the Council.
- C. Duties of Business Manager: The Business Manager shall perform and discharge all of the powers, duties, purposes, and functions hereunder or which by law may be vested in the Council except that the adoption of rules and regulations, the creation and adjustment of classifications and grades, compensation therefore, and investigation or hearing of appeals for dismissals, demotions, suspensions and other punitive action for or in the agency shall be and remain the duty of the Council. Any power, duty, purpose, function, or jurisdiction which the Council may lawfully delegate shall be conclusively presumed to have been delegated to the Business Manager unless it is shown that the Council by affirmative vote recorded in its minutes specifically has reserved the same for its own action. The Business Manager may re-delegate to his subordinates unless by Council rule or express provision of law he is specifically required to act personally.
- D. Facilities: The Business Manager may secure such suitable and convenient offices, examination rooms, and accommodations throughout the state as may be required for the public convenience, and he shall expend Council funds for them for carrying on the work of the Council.
- E. Supplies: The Business Manager shall acquire supplies and equipment necessary for carrying on the work of the Council.
- F. Membership in personnel associations: Members of the Council and the Business Manager may join associations of personnel agencies having as their purpose the interchanging or supplying of information relating to the technique of personnel administration.
- G. Headquarters: The headquarters of the Council is in the city of Phoenix.
- H. Election of officers: The Council shall select its Chairman and Secretary from among its membership at a regular meeting in the month of December of each even-numbered year. They shall hold office for a period of two years or until their successors are elected.
- I. Meetings: Upon call of the Chairman, or in his absence the Secretary, the Council shall meet as often as the needs of the agencies may require and in such places as it may designate. Council meetings shall be open to the public, and any interested person shall be given reasonable opportunity to be heard.
- J. Quorum: A majority of the members of the Council constitutes a quorum. The vote of two concurring members shall be required to make any action of the Council effective.
- K. Minutes: The Council shall keep minutes of its own proceedings and record its official actions. Such minutes and records shall be open to public inspection, subject to reasonable regulations.

ARTICLE 2. INVESTIGATION AND HEARINGS

R13-5-10. Investigation and hearings

- A. Initiative: The Council may hold hearings and make investigations concerning all matters relating to the enforcement and effect of these rules. It may inspect any place of employment covered by these rules to ascertain whether the Council rules are obeyed.
- B. Request: The Council may make investigations and hold hearings at the direction of the governor or the legislature or upon the petition of an employee or a citizen concerning the enforcement and effect of these rules.
- C. Effect of investigation or hearing: The Council may substitute its judgment for that of the agency head as to the justification of punitive action taken and determine whether the cause or causes for the punitive action were substantially supported by the evidence.
- D. Notice of hearing: Whenever a hearing is to be held, the Council shall notify the interested person or persons, parties thereto, personally or by registered mail of the time and place of the hearing.
- E. Failure to appear: If a person shall fail to appear at the time and place set for the hearing or investigation, the Council may as a consequence thereof make any findings or awards as it may deem proper from the facts submitted.
- F. Conduct of hearings: The Council may sit as a whole at a hearing or it may designate one of its members to hold the hearing. A transcript of the hearing shall be reviewed by a majority of the Council prior to making a decision in those cases where one member has been designated to hear a case. The member designated to preside at such hearing may administer

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oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the Superior Court of this state.

- G. **Conduct of investigations:** The Council may sit as a whole or it may designate one of its members or the business manager to conduct investigations. A written report of the results of an investigation conducted by a designated member or the Business Manager shall be reviewed by a majority of the Council prior to making a decision on the matter under investigation. The party conducting the investigation may require the production of books or papers and may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the Superior Court of this state.
- H. **Witness fees:** Witnesses, other than employees, at a hearing or investigation are entitled to the same fees as are allowed witnesses in civil cases in courts of record.
- I. **Payment of fees:** If a witness is subpoenaed by initiative of the Council or its representative, fees and mileage may be paid from the funds of the Council when the amount is certified by the Council or the person authorized to conduct the hearing or investigation and a duly executed claim is presented. If a witness is subpoenaed by the Council or its representative upon request of the accused or any person other than the agency head, witness fees and mileage shall be paid by that person and are not proper charges against Council funds. Employees appearing as witnesses shall be entitled to travel expenses as provided by law from the funds of the agency.
- J. **Immunity:** A person who claims privilege against self-incrimination prior to testimony or the production of books or papers shall not be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which he shall, under oath, have testified or produced documentary evidence in any such hearing or investigation except for perjury committed in so testifying.
- K. **Depositions:** The Council may authorize in writing any party to an action before the Council to cause the deposition of a witness under the following circumstances:
1. The witness does not reside within the state or is out of state.
 2. The witness is too infirm to attend the action before the Council.
 3. The deposition is to be taken for the purpose of discovery in preparing a case before the Council.
- Depositions so taken are made at the expense of the requesting party. If the presence of the witness cannot be procured at the time of the action before the Council, the deposition may be used in evidence by either party or the Council.
- L. **Disobedience of subpoena:** If a witness fails to appear at the time and place designated in the subpoena, or fails to answer questions relating to the matter about which the Council or presiding member is taking testimony, or fails to produce a document, the Council or presiding member may, by affidavit setting forth the facts, apply to the superior court of the county where the hearing is held, and the court shall thereupon proceed as though such failure had occurred in an action pending before it.
- M. **Proceedings:** All hearings and investigations authorized by these rules shall be governed by this rule of practice and procedure. In the conduct of any such hearing or investigation any informality in any proceeding or in the manner of taking testimony shall not invalidate any order, decision, or rule made, approved, or confirmed by the Council. In the conduct of a hearing or investigation, the Council or the presiding member shall not be bound by technical rules of evidence.
- N. **Open hearing:** The hearing or investigation shall be open to the public and to persons involved as principal parties or witnesses. During the examination of any witness or when the defendant is making a statement or testifying, the Council or the presiding member may upon request exclude all other witnesses. Witnesses so excluded may be kept separate and prevented from communicating with each other until all are examined. The Council may upon request exclude from the examination every person except attorneys in the case, the official court reporter, and members of the Council. The proceedings at the hearing or investigation shall be stenographically or mechanically recorded so that a correct, certified transcript by a court reporter may be made. The defendant shall be entitled to a copy of the transcript upon payment of the costs thereof.
- O. **Legal counsel:** Before the hearing of any appeal, each interested party shall designate for purposes of record the presence of his legal counsel. The member conducting the hearing shall advise each party without legal counsel that he is entitled to counsel and to obtain such counsel if he so desires and shall require a statement for purposes of record from each party as to his willingness to proceed without legal counsel. The hearing shall be postponed for a reasonable length of time for the purpose of obtaining legal counsel upon the request of any party without legal counsel. When a hearing has been reset upon a date agreed to by all parties, the hearing shall proceed, and the absence of legal counsel for any party shall be deemed voluntary rejection of such counsel. The Attorney General shall be the legal advisor of the Council and render such legal services as the Council requires.
- P. **Presentation of evidence:** Both the employee and the agency head shall appear at the hearing or investigation and may present their evidence and witnesses either personally or through their chosen representatives. While evidence irrelevant to the causes set forth in the notice of action may be excluded, both parties shall be allowed reasonable latitude in the presentation of their evidence.

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- Q. Findings of fact: Whenever any employee or other person actively interested in a matter before the Council and in connection with which it is holding a hearing requests that the Council makes findings, then the Council shall make findings if such request is made at any time prior to the time the Council takes the matter under submission.
- R. Settlement of disputes: Whenever any matter is pending before the Council involving a dispute between one or more employees and the agency head and the parties to such dispute agree upon a settlement or adjustment thereof, the terms of such settlement or adjustment may be submitted to the Council; and if approved by the Council, the disposition of the matter in accordance with the terms of such adjustment or settlement shall become final and binding upon the parties.
- S. Decision: The Council shall render a decision within a reasonable time after the hearing or investigation. The punitive action taken by the agency head shall stand unless reversed on appeal. In arriving at a decision the Council may consider any prior suspension or suspensions of the appellant or any prior proceedings under this rule. The decision shall be in writing and may contain findings of fact and its order for disposition of the case. The findings may be stated in the language of the pleadings or by reference thereto. The decision of the Council shall be binding and final except for appeal as provided in A.R.S. § 28-236, and the agency head shall forthwith put the same into effect.
- T. Petition for review: After a receipt of a copy of the decision rendered by the Council confirming the agency head's order, the employee may have the determination of the Council reviewed upon writ of certiorari from the superior court of the county in which the employee resides.
- U. Commencement of action: Unless otherwise provided for by these rules, no action or proceeding shall be brought by any person having or claiming to have a cause of action or complaint for wrongs or grievances based on or related to these rules or the administration thereof unless such action or proceeding is commenced and served within 120 days from the date the Department has probable cause or after such person discovered, or with reasonable diligence should have discovered, such cause of action or complaint.
- V. Rehearings or review of decision:
1. Except as provided in rule R13-5-10(X), any party in a contested case before the Merit System Council who is aggrieved by a decision rendered in such case may file with the Council, not later than ten days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor.
 2. Not later than ten days after a decision is rendered, the Council may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. In such case the Council shall give the parties or their counsel notice and an opportunity to be heard on the matter.
 3. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Council. A response may be filed within ten days after service of such motion or amended motion by any other party. The Council may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
 4. The Council may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in rule R13-5-10(W). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- W. Basis for rehearing or review: A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the Council or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 2. Misconduct of the Council or its hearing officer or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
 7. That the decision is not justified by the evidence or is contrary to law.
- X. Decisions not subject to rehearing or review: If in a particular decision the Council makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Council's final decisions.

R13-5-11. General powers and duties

- A. Rules: The Council shall prescribe, amend, and repeal rules in accordance with law for the administration and enforcement thereof. Due notice of the contents of rules shall be given to the agency head and employees. Within a reasonable time after adoption, such rules and amendments shall be published in such manner as the Council determines and distributed free to employees and state agencies and at a reasonable cost to all others.
- B. Classification: Upon request of the agency head, the Council shall create and adjust classes of positions in the agency.

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- C. ~~Punitive action: The Council shall provide for dismissals, demotions, suspensions, and other punitive action for or in the agency.~~
- D. ~~Roster: The Business Manager shall establish and maintain in suitable form an official roster of all persons holding positions in the agency service and enter thereupon their names, complete record of employment in the agency, and other facts prescribed by the Council.~~
- E. ~~Hours and conditions of work: In order to secure substantial justice and equality among employees in the agency service, the Council may provide by rule for days, hours and conditions of work, taking into consideration the varying needs and requirements of the service and the prevailing practices for comparable services in other public employment and in private business.~~
- F. ~~Exchange or transfer of employees: When the agency assumes responsibility for and there is transferred to it a function from any other state agency, the Business Manager may determine the extent, if any, to which employees employed by such other state agency on the date of transfer shall be entitled to have credited to them in the agency service, seniority credits, accumulated sick leave and accumulated vacation because of service with the former agency. The Business Manager shall limit such determination to the time any transferred employees were employed in the specific function or a function substantially similar while in the former agency and such seniority credits and accumulated sick leave and accumulated vacation shall not exceed that to which each employee would be entitled if he had been continuously employed in the agency service.~~
- G. ~~Transferee status: All such employees transferred shall commence service with the agency as probationers.~~
- H. ~~Enforcement of orders and decisions: All orders and decisions of the Council shall be obeyed by and are binding upon the agency heads and employees.~~

ARTICLE 3. CLASSIFICATION

R13-5-15. Classification

- A. ~~Position classification: The Council shall, from time to time, allocate or reallocate all positions to their currently appropriate classification; and shall also prepare position classification plans and necessary changes therein.~~
- B. ~~Creation of classification; qualifications: The Council shall create and adjust classes of positions in the agency service. The classes adopted by the Council shall be known as the Personnel Classification Plan of the Arizona Law Enforcement Merit System Council. The classification plan shall include a descriptive title, a definition outlining the scope of the duties and responsibilities for each class of positions and the minimum qualifications required of applicants for employment or competitors in examinations.~~
 - 1. ~~Official class specifications: The Business Manager shall maintain a master set of all approved class specifications. Such specifications shall constitute the Official Class Specifications in the Personnel Classification Plan. The copies of the specification for each class shall indicate the date of adoption or the last revision of the specifications for such class. Copies of the Personnel Classification Plan shall be open for inspection by employees and the public under reasonable conditions during business hours.~~
- C. ~~Allocation of positions: Every position in the agency service shall be allocated by the Business Manager to the appropriate class in the classification plan. The allocation of a position to a class shall derive from and be determined by the ascertainment of the duties and responsibilities of the position and shall be based on the principle that all positions shall be included in the same class if:~~
 - 1. ~~Sufficiently similar in respect to duties and responsibilities that the same descriptive title may be used;~~
 - 2. ~~Substantially the same requirements as to education, experience, knowledge and ability are demanded of incumbents;~~
 - 3. ~~Substantially the same tests of fitness may be used in choosing qualified appointees;~~
 - 4. ~~The same schedule of compensation can be made to apply with equity.~~
- D. ~~Modification: From time to time as it deems necessary, the Council may establish additional classes and divide, combine, alter, or abolish existing classes. When such actions are taken, the Council shall determine in each instance whether positions affected are to be reallocated to another class or classes after taking into account the duties and responsibilities, qualifications, performance standards, and other related criteria before and after the change and shall determine the status of the probationary and permanent employees affected.~~
- E. ~~Appeal from allocation: Reasonable opportunity to be heard shall be provided by the Council to any employee affected by the allocation or reallocation of his position.~~
- F. ~~Reclassification or reallocation: The Business Manager shall change the classification of an existing position when a material and permanent change in the duties and responsibilities of the position occurs. If the position is occupied at the time of reallocation, the employee in the position may be reclassified provided that:~~
 - 1. ~~They have been in the position at least six months;~~
 - 2. ~~They occupied the position during the change in duties;~~
 - 3. ~~They meet the minimum qualification of the new classification;~~

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4. They pass any required examinations. The employee shall serve the required probationary period. Other changes in status of the incumbent may be accomplished only in accordance with these rules relative to layoff, transfers, demotion or promotion.
- G. ~~New positions: Positions in the agency service shall be established by the agency head as authorized by law subject to budgetary authorization and the availability of funds. The agency head shall promptly report to the Council his intention to establish new positions in order that such positions may be classified and allocated, and shall so report material changes in the duties of any position in his jurisdiction.~~
- H. ~~Classification title: The classification title approved by the Council shall be used in all communications relating to personnel and in all budget and financial records.~~
- I. ~~Military designations for supervisors: The Director of the Department of Public Safety may apply the use of any of the following military terms and insignia to any uniformed supervisory employee, regardless of classification or pay status, for the purpose of indicating to the public and other employees the relative authority such supervisory employees may exercise over all other employees:~~
 1. Colonel;
 2. Lieutenant-Colonel;
 3. Major;
 4. Captain;
 5. Lieutenant;
 6. Sergeant;
 7. Corporal.

ARTICLE 4. COMPENSATION

R13-5-20. Compensation

- A. ~~Normal work week: Because it is the policy of the state that the normal work week of state employees shall be 40 hours, the normal work week of agency employees shall be 40 hours, except that work weeks of different numbers of hours may be established by the agency head in order to meet the needs of the service.~~
- B. ~~Unusual work schedules: When the agency head finds it impossible or impracticable to establish a normal work week for a class or group of positions due to the unpredictable nature of the extent of the work to be required, the Council may authorize an hourly rate of pay for time worked by employees in such positions commensurate with the appropriate grade and rate of pay on the approved Salary Plan.~~
- C. ~~Compensation in full: Except for nonscheduled overtime compensation, employees shall receive the salary or wage prescribed for their respective class as compensation in full therefor and shall not, under any pretext, receive any excess salary, wage, fee, gratuity, or emolument for their personal services to or on behalf of the state unless otherwise authorized by law.~~
- D. ~~Reimbursement: Reimbursement for expenses incurred shall not be prohibited by these rules, except that expense reimbursement claims shall not be duplicated to the state and/or any political subdivisions thereof by any employee.~~
- E. ~~Compensation plan: The Business Manager shall, from time to time, initiate and prepare compensation plans and necessary changes therein for presentation to the Council for their consideration and approval, and which shall be effective only when approved by the Council.~~
- F. ~~Salary ranges: The Council shall establish and adjust salary ranges for each class of positions in the agency service. The salary range shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing such ranges, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The Council may make a change in salary range retroactive to the date of application for such change.~~
- G. ~~Hearings: Reasonable opportunity to be heard shall be provided by the Council to any employee affected by a change in the salary range for the class of his position. A salary range shall be considered as substantially the same as another range when the maximum salary is the same as or within one step of the maximum of such other range, and a range shall be considered to be higher or lower when the maximum salary is at least two steps higher or lower than the maximum of such other range.~~
- H. ~~Limits and intermediate steps: Salary ranges shall consist of minimum and maximum salary limits. The Council shall provide for intermediate steps within such limits to govern the extent of the salary adjustment which an employee may receive at any one time, provided that in classes and positions with unusual conditions or hours of work or where necessary to meet prevailing rates and practices for comparable services in other public employment and in private business the Council may establish more than one salary range or rate or method of compensation within a class.~~
- I. ~~Merit salary adjustment: After completion of a satisfactory probationary period in a position and thereafter, each employee shall receive a merit salary adjustment as provided for in the salary compensation plan upon his employment anniversary date equivalent to one of such intermediate steps when he meets such standards of efficiency as these rules prescribe. When the employee receives an overall performance rating of "unacceptable" on his service evaluation report,~~

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his salary shall be reduced one step (or his next merit salary adjustment shall be postponed) for the number of months between the effective date of his performance rating of "unacceptable" and the effective date of his next periodic performance rating of "standard".

- J. Qualifying service for merit salary adjustment or seniority: Service, to be counted as qualifying for a merit salary adjustment or seniority, must have been:
1. Under permanent appointment or under provisional, emergency or limited term appointment when followed by permanent appointment without any break in continuity of service;
 2. In the same class or in another class with substantially the same or a higher salary range;
 3. Uninterrupted from agency service except as provided by subsection (K) (Effect of break in service); or
 4. Satisfactory as evidenced by an overall employee performance rating of "standard" or better. The employee evaluation report to be considered shall be the last report authorized or required to be filed for the employee by these rules, except that an overall below-standard performance rating received by the employee in a higher class shall not be considered.
- K. Effect of break in service:
1. Periods of absence from agency service for the following reasons shall not be counted as qualifying service:
 - a. Resignation;
 - b. Retirement;
 - c. Leave of absence without pay in excess of 30 days; or
 - d. Suspension or layoff in excess of 30 days.
 2. Periods of absence from agency service for the following reasons shall be counted as qualifying service when authorized by the agency head:
 - a. Vacation, compensating time off;
 - b. Sickness, injury;
 - c. Temporary military training;
 - d. Military service and subsequent periods of rehabilitation;
 - e. Jury duty;
 - f. Leave of absence wherein employee is loaned to another governmental agency for the performance of a specific assignment and is paid by such governmental agency or by the agency governed under these rules;
 - g. Leave of absence without pay for 30 days or less, or
 - h. Suspension or layoff for 30 days or less.
- L. Insufficiency of funds: Salary adjustments shall be made for employees in the agency service in accordance with these rules. If there is not sufficient money available for the purpose in the appropriation from which agency salaries shall be paid, employees shall be assigned leave of absence without pay by the agency head under the layoff procedures prescribed by these rules until sufficient funds are accrued to permit their re-employment.
- M. Special adjustments: The agency head may authorize payment at any step above the minimum salary limits in order to meet recruiting problems or, to give credit for prior agency service, or for special duty assignments, in connection with appointments, promotions, reemployments, transfers, reallocations, or demotions. Other salary adjustments within the salary range for the class may be made by the Council upon application of the agency head. Adjustments within the salary range authorized by this rule may be either permanent or temporary. An employee may receive special duty assignment pay only for the period of time he is performing the required duties of the position.
- N. Rate above maximum: Employees in a particular class shall receive a salary within the limits established for that class provided that when a position has been allocated to a lower class or the salary range or rate of pay of the class is reduced, the agency head may authorize the payment to an employee of a rate above the maximum of the class. During such time as an employee's salary remains above the maximum rate of pay for his class, he shall not receive further salary increases.
- O. Entrance rate: The minimum limit in the salary range for each class is the entrance rate except as otherwise provided in these rules. A merit salary adjustment anniversary date is established for the employee.
- P. Rate on movement to class with lower range: Except for a demotion in lieu of layoff, an employee who moves to a class with a lower salary range may receive, if authorized by the agency head, a rate above the minimum. This rate shall not exceed the rate to which he would be entitled if his services in the higher class had been in the class to which demoted. A new merit salary adjustment anniversary date is established for the employee.
- Q. Rate on movement to class with the same or higher range: An employee moving to another classification with a similar or higher salary range shall be entitled to the next pay range higher than the one he would have received on his next merit salary adjustment if he had stayed in the same classification. A new merit salary adjustment anniversary date is established for the employee.
- R. Full-time and part-time rates: The salary range for each class represents the rate of pay for normal full-time monthly employment unless the compensation plan states otherwise. Where there is part-time or irregular employment in a position for which a monthly salary is established, the employee shall be paid on an hourly basis for the time actually employed.

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- S. Conversion of rates: Monthly or hourly rate of pay may be converted from one to the other when the agency head considers it advisable. In such a conversion, a 40-hour week is equivalent to a 173.33-hour month. All monthly wages are based on a 40-hour week. Rates resulting from such conversions shall be rounded to the nearest dollar.
- T. Rate upon re-employment after permanent separation: A former employee, upon re-employment, shall receive the entrance rate for his class unless otherwise authorized by these rules.
- U. Rate upon re-employment after layoff: A person who is employed from a re-employment list after layoff may receive a salary above the entrance rate for his current class. Such salary shall correspond to one of the steps within the salary range for his current class and shall not exceed the salary he would receive if he had been re-employed in his former class, if not re-employed in the same class as at time of layoff.
- V. Automatic salary adjustment: A class salary range adjustment shall apply equally to all employees within this class and shall not alter anniversary dates for merit salary adjustments. Salary adjustments shall be made in such order that the employee shall gain the maximum benefit from the adjustments.
- W. Attendance records: The agency head shall cause complete and accurate time and attendance records to be kept for each employee over which he has jurisdiction.
- X. Certification of payroll:
 - 1. All payroll vouchers and accounts or demands containing the names of employees claiming amounts due them as salaries or wages for services rendered shall be submitted to the agency head or his lawfully appointed deputy before any sum of money is disbursed in payment thereof.
 - 2. If upon examination the agency head or his deputy finds payroll vouchers and accounts or demands to be in conformity with these rules, he shall make certification to such effect thereon. No person shall draw or sign any warrant or check or otherwise pay any person any amount to which the agency head or his deputy has taken exception.
 - 3. The Business Manager shall review all agency payrolls to ascertain that all employees are paid in accordance to Merit System Council classifications and rules. If the Business Manager finds any employee not being paid in accordance, the Business Manager shall then strike that employee from the payroll.
- Y. Special duty assignments
 - 1. Positions designated as special duty assignments may be compensated at a rate higher than that specified for the classification. Such special duty assignments are temporary and are not promotions as defined by these rules.
 - 2. Special duty assignment pay will only be awarded to those employees who meet the requirements prescribed for such assignment and who are actually performing in that capacity.
 - 3. Employees occupying more than one special duty assignment position may only be compensated for one such assignment. The determination of which one of the multiple special duty assignments the employee will be compensated for will be at the discretion of the agency head.
 - 4. The compensation rate for special duty assignments will be determined by adding the designated special duty assignment pay to the employee's classification salary grade. Compensation for a special duty assignment position will not alter the employee's relative position in the intermediate steps of the compensation plan.

ARTICLE 5. GENERAL ENTRANCE AND PROMOTION PROVISIONS

R13-5-25. General entrance and promotion provisions

- A. Establishment of eligible lists: Eligible lists shall be established as a result of free competitive examination open to all persons who lawfully may be appointed to any position within the class for which such examinations are held and who meet the minimum qualifications requisite to the performance of the duties of such position as prescribed by the specifications for the class or these rules.
- B. General re-employment lists: For each class there shall be maintained a general re-employment list consisting of the names of all persons who have occupied positions with probationary or permanent status in the class and who have been laid off or demoted in lieu of layoff. Within one year from the date of his layoff in good standing, or his voluntary demotion, the name of an employee who had probationary or permanent status may be placed on the general re-employment list with the consent of the agency head. The general re-employment list may also contain the names of persons placed thereon in accordance with other provisions of these rules.
- C. Order of names: The order on which names appear on re-employment lists shall be determined by the relative order of the combined scores of efficiency and seniority as for layoff.
- D. Removal of names: Any name, after a period of three consecutive years, shall be removed from the re-employment lists for the class unless the period is extended by the Council.
- E. Changes in lists: The Business Manager may make changes in records to correct clerical errors both before and after the announcement of an eligible list, provided that any changes of rank, or addition or subtraction of names, made on lists of eligibles because of clerical errors or re-ratings, shall not change the date of the adoption of such lists, nor give to any persons the right to claim beginning date of eligibility other than the date of the promulgation or adoption of the original eligible list that created their eligibility.

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- F. ~~Expiration: The duration of each entrance or promotional list shall begin with the date of the promulgation thereof, and shall expire one year thereafter unless such duration is reduced, canceled, or extended by the Council.~~
- G. ~~Reduction: After a list has been in effect for a period of not less than six months, its duration may be reduced or canceled by the Council.~~
- H. ~~Extension: Prior to expiration of a list, the duration of the list may be extended by the Council.~~
- I. ~~Notification: When the duration of a list is reduced, canceled, or expired, all persons whose names appear thereon shall be notified and, provided they possess the current minimum qualifications for the classification involved, given the opportunity to compete in the examination, if any, given to establish a new list for the classification.~~
- J. ~~Classification abolished or divided: An entrance or promotional list for a classification shall be deemed canceled if the classification for which it was established is abolished. If a classification is divided, the list therefor may likewise be divided and the names of the eligibles thereon being placed on one or both new lists established on the basis of compliance with the minimum qualifications prescribed for such classifications. If two or more classifications are consolidated, the lists therefor may likewise be consolidated. When lists are so divided or consolidated, a formula rating may be applied to the education and experience of eligibles involved for the purpose of determining their order or rank on the new lists.~~

R13-5-26. Examinations

- A. ~~Competitive examination: Examinations for the establishment of eligibility lists shall be competitive and of such character as fairly to test and determine the qualifications, fitness and ability of competitors actually to perform the duties of the classification for which they seek appointment.~~
- B. ~~Type of examination: Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skill, or any combination of these; and any investigation of character, personality, education and experience, and any tests of intelligence, capacity, technical knowledge, manual skill, or physical fitness.~~
- C. ~~Minimum qualifications: The minimum qualifications established by the Council for each classification shall be used as a guide for determining the fitness and qualifications of employees, provisional appointees, or applicants for examinations; and for such purposes the Council may require such certificates of citizens, physicians, public officers, or others having knowledge of the applicant, as the good of the service may require. Satisfactory documentary evidence of citizenship, education, physical condition, honorable discharge from the armed forces of the United States, possession of valid licenses for various purposes, or other necessary evidence of identification, fitness, and qualifications shall be furnished to the Business Manager upon his request at the sole expense of the applicant.~~
- D. ~~General qualifications: All candidates for, appointees to, and employees in the agency service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, good health, and freedom from disabling defects. Where the position requires the operation of a motor vehicle, the applicant must have a valid Arizona operator's license at the time of appointment. The foregoing general qualifications shall be deemed to be a part of the personal characteristics of the qualifications of each classification specification and need not be specifically set forth therein. The Council may prescribe alternative or additional qualifications for individual classifications and such shall be made a part of the classification specifications.~~
- E. ~~Waivers: The Council may establish any legal minimum or maximum age limit for any examination or classification. Minimum qualifications may be waived by the Council whenever insufficient applications for an examination indicate such necessity. To be effective, waivers shall be published as a part of the original examination announcement or supplements thereto. Waivers shall apply only to the examination for which the waivers are announced.~~
- F. ~~Announcement: Examinations shall be held at such times and places as the Council or the Business Manager may determine. The Business Manager shall direct the preparation of every examination and the publication of an announcement of advertisement thereof within a reasonable time before the scheduled date of the examination. Such announcements shall contain information concerning:
 1. The date and place of the examination;
 2. Duties and salary range of the class;
 3. The nature of the minimum qualifications; and waivers, if any;
 4. Eligible classes, if a promotional examination;
 5. The general scope of the examination;
 6. The relative weight of its several parts if more than one type of test is to be used;
 7. Source of application forms;
 8. Closing date for receipt of applications;
 9. The length and life of the eligible list to be established thereby;
 10. Such other information as may be required by Council rule;
 11. Such other information as the Business Manager deems applicable or informative.~~
- G. ~~Application: Every applicant for examination shall file a formal signed application with the Council. All applications shall be filed at the place, within the time, in the manner, and on the form specified in the examination announcement. A separate application shall be filed for each examination unless otherwise specified in the examination announcement.~~

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Approved applications shall remain on file in the office of the Council for at least one year and thereafter until ordered destroyed by the Council. Applications rejected for any reason may be destroyed after six months at the discretion of the Council. Under no circumstances shall applications or examinations be returned to applicants after final submission. Blank application forms shall be furnished without charge to all persons requesting them. Such applications when filed and all other examination materials, including examination questions and booklets, are the property of the Council and are confidential records open to inspection only if and as provided by Council rule.

- H. Rejection of application: The Business Manager shall examine each application for examination and determine if the applicant appears to meet the minimum qualifications prescribed for the class. The Business Manager may return any application that is incomplete or reject any application which shows that the applicant does not meet the minimum qualifications prescribed for the class.
- I. Eligibility:
1. Any person who comes under any of the following categories may be refused admittance to any examination, or may not be declared as an eligible, or may not be certified prior to appointment, if he:
 - a. Lacks any of the requirements established by the Council for the examination or position for which he applies;
 - b. At the time of examination has permanent status in a position of equal or higher class than the examination or position for which he applies;
 - c. Is physically or mentally so disabled as to be rendered unfit to perform the duties of the position to which he seeks appointment;
 - d. Is addicted to the use of intoxicating beverages to excess;
 - e. Has been convicted of any crime involving the use of a motor vehicle and intoxicating beverages;
 - f. Is addicted to the use of narcotics or habit-forming drugs;
 - g. Has been convicted of any crime involving the use of a motor vehicle and narcotics or habit-forming drugs;
 - h. Has been convicted of a crime involving moral turpitude;
 - i. Is charged with any crime, which upon conviction, would cause denial of eligibility under this rule;
 - j. Has been dismissed from any position for any cause which would be a cause for dismissal from the agency service;
 - k. Has intentionally attempted to practice any deception or fraud in his application, in his examination, or in securing his eligibility; or has failed to file a complete and proper application for examination;
 - l. Has declined appointment to full-time employment after certification;
 - m. Has failed to reply within a reasonable time to communications concerning his availability for employment;
 - n. Has made himself unavailable for employment by requesting that his name be withheld from certification;
 - o. Is, in the opinion of the agency head, unsuited or not qualified for employment;
 - p. Directly or indirectly carries on, advocates, teaches, justifies, aids, or abets a program of sabotage, force and violence, sedition, or treason against the government of the United States and/or this state, or refuses to subscribe to the Oath of Loyalty set forth in Council rules;
 - q. Has taken part in the compilation, administration or scoring of the examination;
 - r. Has used or attempted to use political pressure or bribery to secure an advantage in any examination or in securing an appointment from an eligible list established as a result of any examination.
 2. Upon request of the Council, the agency head or other responsible person shall furnish to the Council an explanation of the reason or reasons for the rejection of an applicant under this rule.
- J. Authorization to take examination: Each applicant shall be notified of the approval or disapproval of his application. The applicant's authorization to take the examination shall be in such form as may be prescribed by the Business Manager.
- K. Questions approved and sealed: All examinations shall be approved by the Business Manager in advance of the examination. In transmitting material containing examination questions, each package thereof shall be securely sealed and marked. The seal shall not be broken until the beginning of the examination and then only in the presence of all the competitors and by the authorized agent of the Business Manager.
- L. Explanations: All necessary explanations shall be made to the whole group taking the written examinations and no question shall be explained to any individual competitor. Examiners shall not make any comment that may assist any competitor to answer any question.
- M. Prohibited acts: Communication between competitors during examination is strictly forbidden, and competitors are forbidden to receive any unauthorized assistance in the examination. Before the commencement of an examination, competitors shall be required to hand to the examiner any unauthorized printed or written matter in their possession that might serve to aid them in the examination. Evidence of copying or collusion may result in the cancellation of his examination and the debarment of the competitor from future examinations of any kind. Copies of the questions in the examination shall not be made or taken from the examination room except for the purposes of administration authorized by Council rule.
- N. Identity concealed: Written examinations shall be so managed that no examination paper will disclose the name or identity of any applicant until all the examination papers have been marked.

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- Q. Identification number: Each competitor shall write his name and address upon a declaration sheet or card which must have printed upon it a serial number, to be known as his identification number. The competitor shall mark upon each examination sheet his identification number. When the examination papers have been scored, the declaration sheets or cards shall be unsealed; and the examination papers shall be assigned to the names of the persons who wrote them.
- P. Prohibited marks: Any competitor in any written examination who places any identifying mark upon his examination papers, other than his identification number, may be deprived of all benefits under such examination.
- Q. Rating of written examinations: All examination papers shall be marked and graded under the direction of the Business Manager and in accordance with the examination announcement. When, in the course of grading a competitor's papers, it becomes apparent that he would receive a general average score less than the minimum score for eligibility fixed by the Business Manager or that he would receive less than the minimum score required on a given portion of the examination, the competitor shall be considered as having been disqualified and the marking of his papers need not be completed.
- R. Inspection of examination papers: Examination papers shall be open to inspection only as provided by Council rule.
- S. Time for inspection: Except as otherwise provided herein, upon written request filed in the office of the Council within ten days after notice of the result of his examination has been mailed to him, any competitor may inspect his examination papers at such location as may be designated by the Business Manager. Such inspection shall be under the supervision of the Business Manager. Examination papers containing copyrighted or standardized examinations shall not be available for such inspection. Competitors desiring to inspect their examination papers at other than the Phoenix office of the Council may be charged a fee to compensate the state for the actual expenses incurred in providing such special inspection accommodation.
- T. Who may inspect: A competitor's examination papers shall be open to inspection only by the Council, the Business Manager, the competitor, his attorney upon written authorization of the competitor, or the agency head.
- U. Copying prohibited: Copying questions or answers contained in written examination papers, making erasures or alterations in the markings on the papers, or any mutilation thereof by any person is forbidden. Evidence that a competitor or his attorney has copied from, altered, or mutilated an examination paper may result in the competitor's debarment from competition in future examinations or the cancellation of the competitor's eligibility for employment, or both.
- V. Inspection of written examination: During regular office hours in the two calendar days beginning on the first work day after a written examination has been held and at the office of the Council or such other place as may be designated by the Business Manager, any competitor may inspect a keyed copy of the questions in his examination for the express purpose of requesting review of such items as the competitor may believe are incorrectly or improperly keyed. Keyed copies of copyrighted or standardized examinations shall not be available for review. The Business Manager may also provide that there will be no key inspection privileges if notice of the suspension of this privilege is made a part of the written examination instructions given to each competitor at the time of the written examination.
- W. Appeal from written examination: The competitor may, during the period of inspection provided in this rule, file with the Business Manager a written appeal from any part of the test, citing the item or items against which the appeal is directed and stating the reason for such appeal. The examination shall not be scored until all the disputed items have been reviewed and appropriate adjustment, if any, made by correction in the scoring key or elimination of the disputed items. In no event is the Business Manager required to furnish keyed copies of questions of an essay or problem type when in his judgment such questions are not subject to scoring by an absolute standard. In addition, a written appeal may be made from the result of the written examination on the grounds of fraud or clerical error in scoring the papers. Such appeal shall be filed at the office of the Council within ten days after notice of the result of his examination has been mailed to the competitor filing the appeal.
- X. Formula rating: In any examination, the appraisal of education and experience of the competitors may be made by formula applied to the information and data given on their official application. Such appraisal may be made without interview by a qualifications appraisal board and without evaluating the personal qualifications of the competitors.
- Y. Qualifications appraisal boards: The education, experience, and personal qualifications of competitors may be rated by the qualifications appraisal boards after interviewing the competitors and making such investigations as may be found necessary.
- Z. Composition of boards for employees: Each such qualifications appraisal board may include: One representative of the Council who shall be chairman of the board; and, whenever feasible, one or more citizens who shall not have held elective public office within one year preceding appointment as a member of the qualifications appraisal board and who are qualified to appraise the education, experience, and personal qualifications of competitors. The chairman of the board shall determine the number of citizen members of each such qualifications appraisal board and shall select and appoint such citizen members. If one or more of the members of the qualifications appraisal board is not present during all or part of the proceedings, the qualifications appraisal board may nevertheless proceed. The chairman of the qualifications appraisal board may fill any vacancy according to the standards stated in this rule. Except in a promotional examination, a member of the board shall disclose each instance in which he knows the applicant personally and shall not rate such applicant. The Business Manager shall notify the Council in advance of any qualifications appraisal board and the purpose of it so that the Council can determine who shall be qualified to act as chairman.

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- AA. Competitive ratings: Rating of education, experience and personal qualifications by qualifications appraisal boards shall be made on a competitive basis in that each competitor shall be rated thereon in relation to the minimum qualifications for the class in question and in relation to the comparable qualifications of other competitors.
- BB. Minimum qualifying ratings: Ratings of education, experience, and personal qualifications shall be made independently by each qualifications appraisal board member on forms prescribed. Such ratings may be made either before or after discussion by the qualifications appraisal board. Each member shall sign his forms and deliver them to the chairman of the qualifications appraisal board. Ratings accorded competitors shall be expressed numerically, with 70 being the minimum qualifying rating.
- CC. Below qualifying rating: When a competitor is rated below 70 by a member of the qualifications appraisal board, the chairman of the qualifications appraisal board shall make a record of the reason or reasons for such rating on the chairman's rating sheet and this shall be initialed by the member.
- DD. Average rating: The ratings of the several members of the qualifications appraisal board shall be averaged to determine each competitor's final rating on education, experience, and personal qualifications.
- EE. Majority rating: If the average rating is below 70 but a majority of the members of the qualifications appraisal board assigns at least the required rating of 70, the competitor shall be given a rating of 70. If a majority of the members of the qualifications appraisal board assigns a rating below 70, the competitor shall be disqualified regardless of the fact that his average rating may be 70 or more.
- FF. Rating of personal traits: As an alternative method, the qualifications appraisal may consist of a formula rating of education and experience and a finding by a qualifications appraisal board as to whether the competitor is acceptable from the standpoint of prescribed personal traits. The evaluation of education and experience shall be determined on the basis of a previously determined formula. If the competitor is found to possess the required education and experience, he shall appear before the qualifications appraisal board. If a majority of the members of the qualifications appraisal board finds that the competitor is acceptable from the standpoint of required personal traits, the qualifications appraisal board shall find him qualified but shall give him no numerical rating. If a majority of the qualifications appraisal board find that the competitor is not acceptable from the standpoint of required personal traits, such members shall record their reasons for such findings; and the competitor shall thereby be disqualified.
- GG. Special inquiry: In examinations for classes of trust or involving the handling of money, the exercise of the powers of peace officers, law enforcement or regulation, the handling of information involving crimes or criminals, the collection of taxes or investigations connected therewith, the care or custody of wards of the state, or otherwise requiring the competitors to be of high moral standards and integrity, the Business Manager or the qualifications appraisal board shall, and in any other examinations may, make special inquiry into the past records of all competitors and shall disqualify any whose records or reputations shall in his or their judgment warrant such action. The Council shall be furnished an explanation of the reason or reasons for the disqualification of a competitor under this rule.
- HH. Appeal from qualifications appraisal board: Within ten days after the notice of the result of his examination has been mailed to him, a competitor may file with the Business Manager at the office of the Council a written appeal citing grounds of irregularity, bias, or fraud in the conduct of the investigation or interview or of erroneous interpretation or application of the minimum qualifications presented for the class.
- II. Hearing: Prior to the time when the Council hears the appeal, the members of the qualifications appraisal board and all other interested persons shall be notified of the time and place of the hearing.
- JJ. Appeal granted: If the Council grants the appeal, it may give the competitor a rating of 70 or more on education, experience, and personal qualifications.
- KK. Rating method: The final earned rating of each person competing in any examination shall be determined by the weighted average of the earned ratings on all phases of the examination.
- LL. Weights: The weights assigned to the various parts of an examination represent the relative value of each part in the whole examination. Weights for each phase shall be established by the Business Manager in advance of the giving of the examination and published as part of the announcement of the examination. Unless otherwise stated in the examination announcement for examination consisting of both these parts, the weights shall be: Written test, 40 percent; Qualifications appraisal, 60 percent.
- MM. Computing examination score:
1. The method of obtaining the average percentage of the examination is as follows:
 - a. Multiply the rating obtained in each part of the examination by the relative weight of that part;
 - b. Add the products;
 - c. Divide the sum of the products by the sum of the relative weights.
 2. The quotient obtained will be the average score for the examination. To this average score shall be added an amount equal to five percent of such score for veterans with recognized military service.
- NN. Minimum qualifying rating: Competitors shall be required to attain a score of not less than 70 in each part of the examination and a general average score of not less than 70 in order to qualify in an examination.
- OO. Adjusted score: In written tests, the 70 used to represent the minimum score need not be the arithmetic 70 percent of the total possible score but may be an adjusted score based on a consideration of the difficulty of the test, the quality of the

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competition, and the needs of the service. Any such adjusted score shall be established by the Business Manager before identification of the competitor's examination papers.

- PP. Qualifying for lower class: When an examination is held for any given class and if there is also being held an examination for a lower class in the same series, it shall be within the discretion of the Business Manager to pass a competitor for a place on the eligible list for the lower class if the competitor attains a passing score for the examination for the lower class but does not receive a passing score in the examination in which he is competing.
- QQ. Notice of examination result: As soon as the scoring of an examination has been completed and the eligible list established, each competitor shall be notified by mail of the results of his examination and, if successful, of his general average score and his relative position upon the resulting employment list.
- RR. Establishing list in case of tie: Two or more competitors receiving the same rating in an examination shall be placed on the resulting list according to their respective ratings attained in the chief essential of the examination. If the foregoing does not result in placement, further determination may be made by application of actual written test scores, and then by length of service in current classification.
- SS. Order of names: In establishing any eligible list of promotional list following an examination, the names of persons who have attained the passing mark in such examinations shall be placed on the list in the order of final earned ratings, except as such order may be modified by the application of veterans preference credits.
- TT. Length of list: When the order of names has been determined after applying the appropriate veterans preference credits, the Business Manager may thereafter limit to suit the needs of the service the number of names to be placed on the employment list.
- UU. Certificates of competence: Certificates of competence may be issued to candidates who are successful in certain phases of examinations involving a particular knowledge, ability or skill. For the period named in such a certificate, the certificate may be accepted as evidence of the candidate's competence in lieu of participation in that phase of an examination.
- VV. Continuous testing: For classes of positions for which it is found difficult to maintain adequate eligible lists, applications may be received, examinations may be conducted, and eligible lists created continuously. The names of eligibles who took the same or a comparable examination on different dates may be ranked for purposes of certification in the order of final earned ratings, except as such order may be modified by the application of veterans preferences. Eligibility from a continuous examination may be deemed to be established as of the date of examination.
- WW. Merging entrance eligibility lists: When there are names remaining on an eligibility list and there is a need for additional names to draw from, a new examination may be given and both lists then merged in qualifying order.

R13-5-27. Promotion

- A. Promotional lists: Vacancies in promotional positions shall be filled from among employees holding positions in appropriate classes, and appropriate promotional lists shall be established to facilitate this purpose. Every employee having the qualifications and showing willingness and ability to efficiently perform service assigned to him shall be permitted to advance according to merit and ability.
- B. Examination: Whenever the needs of the service require, the Business Manager shall announce and provide for promotional examinations for purposes of establishing promotional lists.
- C. Eligibility: Promotional examinations shall be limited to employees holding positions with permanent status in a class appropriate for the examination. If the examination is to establish a district or section promotional list, applicants shall be limited to permanent employees holding positions in the district or section.
- D. Qualifications: No employee may participate in a promotional examination unless he has the minimum education and experience qualifications and any license, certificate or other evidence of fitness prescribed for the classification for which the examination is given.
- E. Performance report: To be eligible to participate in a promotional examination, overall performance ratings of at least "standard" are required for the employee's last one year of service.
- F. Resignation of promotional eligible: An employee shall relinquish his right of promotion if such employee:
1. Resigns from agency service.
 2. Refuses to accept promotion.
- The name of any employee who relinquishes his right to promotion shall be removed from the promotional list.
- G. Merging promotional eligibility lists: When there are names remaining on a promotional eligibility list and there is a need for additional names to draw from, a new examination may be given and both lists then merged in qualifying order.

R13-5-28. Veteran's preference

- A. Age limit: A veteran of the Army, Navy, Marine Corps and Coast Guard of the United States, holding an honorable discharge therefrom and who qualifies under the United States Veterans Administration or as defined in A.R.S. § 42-276, shall be eligible to apply for and receive employment regardless of age, if otherwise qualified, subject only to the requirement that he is below the regular retirement age at the time of entering the employment. (Ref.: A.R.S. § 38-491).

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- B. Percentage of preference: A veteran of the Army, Navy, Marine Corps and Coast Guard of the United States, holding an honorable discharge therefrom and who qualifies as a veteran under the United States Veterans Administration or as defined in A.R.S. § 42-276, who takes an examination pursuant to application for employment shall, in the determination of his final rating on such examination, be given a preference of five percent over persons other than veterans, which shall be added to the grade earned by him, but only if such veteran earns a passing grade without preference. (Ref.: A.R.S. § 38-492).
- C. Order of names; ties: The veteran shall be eligible for employment in the order and on the basis of the rating attained in the examination after the appropriate percentage credit has been added. All ties shall be decided in favor of veterans.
- D. Restoration:
1. An employee, having been inducted or ordered into active service in the armed forces of the United States after 1 August 1939, and having served in the armed forces and qualifying under the United States Veterans Administration or as defined in A.R.S. § 42-276, shall, upon completion of his service, be restored to the position held by him at the time of induction or of reporting for service, or to a position having similar or other duties which he is qualified to discharge, and of like status and pay, if such employee:
 - a. Possesses a certificate of satisfactory training and service or honorable discharge issued by the proper military or naval authority;
 - b. Is still qualified to perform the duties of the position.
 - c. Applies for restoration within 60 days after separation from the armed forces;
 2. For the purposes of computing seniority, retirement and other employment benefits, all service of an employee ordered into military service as contemplated by law, shall be counted as continuous service with the agency; provided, however, that such military service was immediately preceded by agency service and qualification for restoration is made within the time provided.
- E. Promotion: An employee in recognized military service, whose name appears on a promotional list, appointment from which would accord permanent status, shall be retained on such list and have his name certified to fill any vacancy which may occur during the period his name is so retained on such list; provided, however, the employee is qualified for restoration. The agency head may appoint him to fill the position to take effect upon his return to agency service.
- F. Examination: An employee in recognized military service shall be entitled to take the identical promotional examination he would have been entitled to take had he continued to hold the position last held prior to entrance into recognized military service. Upon restoration, the examination shall be held if then requested by the employee. If the employee qualifies in the examination, his name shall be appropriately placed on the list that resulted from the original examination. He shall retain his place on the list for one year from the date such eligibility is established.

ARTICLE 6. GENERAL APPOINTMENT PROVISIONS

R13-5-30. General appointment provisions

- A. Oath of personnel required: Each person appointed to serve in the agency shall, before entering upon his duties, take an oath in writing before the agency head or other person authorized to administer oaths in this state, after reading the provisions of A.R.S. §§ 16-205, 16-206, 13-707, 13-707.01 and 38-231.
- B. Form: The oath to be taken shall be as follows:
“I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the state of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of _____ according to the best of my ability, so help me God (or so I do affirm). (A.R.S. § 38-231(G)) I further do solemnly swear (or affirm) that I take this obligation freely without mental reservation or purpose of evasion; that I do not advocate, nor am I a member of any purported political party or organization that advocates the overthrow of the government of the United States, or of this state, or of any government in the United States, by force or violence; and that during such time as I am employed by the state of Arizona, I will not advocate nor become a member of any purported political party or organization that advocates the overthrow of the government of the United States or of this state, or of any government in the United States, by force or violence, so help me God.”
- C. Refusal: Any person who refuses or fails to take the oath required by these rules within the time provided forthwith forfeits his right to his position, and the position shall be considered vacant, refusal being sufficient cause for dismissal.
- D. Administration: The oath shall be administered in a manner which will best awaken the conscience and impress the mind of the person taking the oath, and it shall be taken upon the penalty of perjury.
- F. Filing: After subscription, oaths shall be filed in the office of the Council.
- F. Filling positions: The agency head shall fill positions under his jurisdiction by appointment, including cases of transfers, re-employment, promotions and demotions in accordance with these rules. The Governor shall fill the position of Superintendent of the Arizona Highway Patrol from a list of candidates who have been examined and certified by the Merit Sys-

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tem Council as meeting the qualifications prescribed in the job specification for Superintendent, as a result of open and competitive examination.

- G. Appropriate class: No person shall be appointed under a class not appropriate to the duties to be performed.
- H. Request for certification: Whenever a vacancy in any position under his jurisdiction is to be filled and not by transfer, demotion, or re-employment, the agency head shall submit a request to the Business Manager that the names of persons eligible for appointment to the position be certified. Whenever a vacancy in the position of Superintendent of the Arizona Highway Patrol is to be filled, the Council shall certify the names of employees eligible for promotion to the position to the Governor.
- I. List order: The order of list preference in certifying eligibles shall be:
 - 1. District or section re-employment list,
 - 2. District or section promotional list,
 - 3. General re-employment list,
 - 4. Service-wide promotional list,
 - 5. Special limited term,
 - 6. Eligible list.
- J. Comparable lists: In the event an employment list is not available for the class to which a position belongs, certification of names from appropriate employment lists of the same or higher level may be made.
- K. Certification of names from entrance examination: There shall be certified to the agency head the names and addresses of the three persons standing highest on the employment list for the class in which the position belongs and who have indicated their willingness to accept appointment under the conditions of employment specified. If fewer than three names of persons willing to accept appointment are on the list from which certification is to be made, then additional eligibles shall be certified from the various lists next lower in order of preference until three names are certified. If there are fewer than three names on such lists, there shall be certified the number thereon. In such case the agency head may demand certification of three names and examinations shall be conducted until three names may be certified. The agency head shall fill the position by the appointment of one of the persons certified.
- L. Certification of names from promotional examination: If the list from which certification is to be made is a promotional list, then names of all the eligible employees standing highest in order thereon shall be certified to the agency head. When he deems necessary, the agency head may demand certification of additional names and examinations shall be conducted and an appropriate list established. The agency head shall fill the position by appointment of one of the persons certified.
- M. Reply to notice of certification: It shall be the duty of every eligible to deliver his response within ten days after notice of certification is mailed to him. Failure of the eligible to respond within the time provided or to accept full-time employment under the conditions specified shall cause the removal of the eligible's name from the employment list from which certification was made.
- N. Certification limit: The name of an eligible shall not be certified to the agency head more than three times. After an eligible's name has been certified from the employment list for the class in which the position belongs and he has been considered three times for actual appointment and has not been appointed, the eligible's name shall be removed from the employment list from which certification was made.

R13-5-31. Limited term or provisional

- A. Limited term: Limited term positions are those positions designated temporary in nature or funded from sources outside of the agency's regular legislative appropriation. Whenever the agency head requires the appointment of a person to a limited term position, the request for certification shall state the expected duration of the position. Persons appointed to limited term positions will after successful completion of a probationary period, acquire all of the rights of permanent employees except layoff, re-employment and reinstatement.
- B. Certification: Eligibles shall be certified in accordance with their position on the appropriate employment list and their willingness to accept appointment to such position as "limited term employees."
- C. Termination: A limited term employee may be separated at any time prior to the expiration of the term for which appointed by advising him either orally or in writing of the separation; provided, however, a limited term employee may not be separated except for cause if emergency or provisional employees in limited term positions remain employed in the same class and the same layoff subdivision. If separated for cause, the agency head shall give him on or before date of separation, written notice setting forth the reasons therefor. The employee has no appeal from the action of the agency head in terminating his limited term employment except on the grounds that provisional or emergency employees remain employed in violation of this rule. The Business Manager shall not again certify for re-employment the name of a person who has been separated for cause unless he determines that the reason for separation should not bar the person from further employment. Cause as used in this rule shall include failure to demonstrate merit, efficiency, fitness and moral responsibility.
- D. Provisional appointments

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1. When there is no employment list from which a position may be filled, the agency head may fill such position by provisional appointment. Such provisional appointment may continue only until an eligibility list is certified by the Merit System Council for the position to which the employee is a provisional appointee.
2. An appropriate examination shall be given and an employment list shall be established for each class to which a provisional appointment is made within 12 months after such appointment.
3. Upon termination a provisional employee has no appeal from the action of the agency head.

E. Special limited term

1. Special limited term shall not exceed three years for the classification of Officer Trainee. The purpose is to allow the agency to employ qualified Officer applicants for the classification of Officer between the ages of 18 and 21 years and to provide immediate employment for qualified applicants 21 years or older.
2. Individuals employed under the provisions of this rule may remain on an eligibility list for the duration of appointment. Such eligibility list shall be certified to the agency head under the provisions of R13-5-30(I) at the time the agency head requests certification of eligibles for the classification of Officer.

R13-5-32. Intermittent

- A. Probable amount of work: Whenever the agency head requires the appointment of a person to a position requiring the performance of work on an intermittent or irregular time basis, the request for certification shall state the probable amount of working time to be required.
- B. Certification: Eligibles shall be certified in accordance with their position on the appropriate employment list and their willingness to accept employment to such position as "intermittent employees".

R13-5-33. Emergency

Emergency: The agency head may, to prevent the stoppage of public business when an emergency arises and persons on employment lists are not immediately available, make emergency appointments for a period not to exceed 31 working days.

R13-5-34. Re-employment

- A. After resignation or demotion: The agency head may re-employ within one year any person having probationary or permanent status who was separated from his position through resignation, termination, or who was demoted without fault or delinquency on his part, if within that time there is need for his services in a position in the class from which the employee was separated or demoted or in a lower class requiring similar types of qualifications and knowledges and abilities, or in another class having substantially similar duties, responsibilities, and qualifications, and substantially the same salary range. Any employee re-employed to a position under the provisions of this rule shall serve the probationary period prescribed for the class before attaining permanent status in such position and the employee shall not receive benefit of any prior seniority.
- B. After provisional appointment: An employee who has vacated a position within the agency to accept another position under provisional appointment shall, if he so desires, be re-employed in his former position at the termination of such appointment.
- C. After rejection from higher position: An employee who has vacated a position to accept another position in a higher class, or a class on the same level, and who is rejected during the probationary period shall be re-employed in his former position.
- D. After appointment by governor: An employee who has vacated a position to accept appointment by the governor to an office or position to serve at his pleasure, or for a fixed term, or by the legislature, shall at the termination of such appointment, or term of office, or any extension thereof by operation of law or by new appointment, be re-employed in his former position.
- E. Acceptance of position subject to re-employment rights: Every person accepts and holds a position in the agency service subject to re-employment or restoration of another person thereto. The status of the person displaced shall be determined by the Business Manager in accordance with these rules, but such person shall not be deprived of his earned position on the eligible list from which he was certified.

R13-5-35. Probationary period

- A. Length:
 1. An appointee from an entrance eligibility list for a commissioned classification shall be on probation during the required training program for a classification and after having completed this program the appointee shall be on probation for a period of one year unless the agency head increases the length of the individual's probationary period by adding thereto periods of time during which a probationer is absent from his position or has performed below standard services.
 2. An appointment from an eligible list for a promotional commissioned employee's position is permanent after expiration of one year probationary period of full time employment unless the agency head increases the length of individual probationary periods by adding thereto periods of time during which a probationer is absent from his position or has performed below standard services.

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3. An appointment from an eligible list or promotional eligible list for a noncommissioned employee's position is permanent after expiration of a 12-month probationary period of full-time employment with an overall performance appraisal rating of satisfactory. With an overall performance appraisal of excellent or outstanding, the probationary period may be reduced to six months. The agency head may increase the length of individual probationary periods by adding thereto periods of time during which a probationer is absent from his position or has performed in a less than satisfactory manner.
- B. Appointment from re-employment lists: Appointments from a sectional or general re-employment list of persons or demotion of employees who have previously satisfied the probationary period in the class to which the appointment or demotion is made do not require an additional probationary period. Any employee demoted or certified to a position from any re-employment list for a class different from that held by him when laid off shall serve a probationary period before attaining permanent status in such position.
- C. Rejection: Any probationer may be rejected by the agency head during the probationary period for reasons relating to the probationer's qualifications, the good of the service, or failure to demonstrate merit, efficiency, fitness, or moral responsibility.
- D. Notice of rejection: A rejection during the probationary period is effected by the service upon the probationer of a written notice of rejection which shall include an effective date for the rejection which shall not be later than the last day of the probationary period, and a statement of the reasons for the rejection. Service of the notice shall be made on or prior to the effective date specified. A copy of the notice shall be filed with the Business Manager. If re-appraisals or departmental reviews are not completed prior to the last day of probation, the probationary period will be extended until the reviews are completed.
- E. Action of Council: The Council at the written request of a rejected probationer, filed within ten calendar days of the effective date of rejection, may investigate with or without a hearing the reasons for rejection. After investigation, the Council may:
 1. Affirm the action of the agency head; or
 2. Restore the probationer to the position from which he was rejected, but this shall be done only if the Council determines, after hearing, that there is no substantial evidence to support the reason or reasons for rejection, or that the rejection was made in fraud or bad faith. At any such hearing the rejected probationer shall have the burden of proof. Subject to rebuttal by the probationer, it shall be presumed that rejection was free from fraud and bad faith and that the statement of reasons therefor in the notice of rejection is true.
- F. Rejection notice withdrawn: The agency head may cancel or withdraw a notice of rejection of a probationer.
- G. Military service: If a probationer enters or has entered the military service while serving a probationary period, and following his return satisfactorily completes his probationary period, such probationary period shall be considered to have been satisfactorily completed on the date on which it would have been completed had he remained in the position without interruption.
- H. Time of probationer evaluation: A report of the probationer's performance shall be made within 15 days before the end of each six month period of the probationer's service. If the probationer is laid off or rejected, a final report shall be filed for the period not covered by previous reports.
- I. Duty to reject probationer: If the conduct, capacity, moral responsibility, or integrity of the probationer is found to be unsatisfactory, it shall be the duty of the agency head to cause the rejection of the probationer from his position.

R13-5-36. Duration appointments

- A. Scope and application
 1. Whenever the United States is engaged in war or whenever the governor finds that an emergency exists in connection with the national defense, appointments shall be made on a duration basis to all classes and positions, except that the Business Manager may permit regular appointments and provide for regular examinations whenever the regular procedure would be in the best interests of the state.
 2. Unless otherwise provided in these rules, the regulations governing the status, tenure, and conditions of employment of regular employees shall govern the status, tenure and conditions of employment of duration employees.
- B. Duration examinations: To establish lists of persons available for duration appointment, the Business Manager may provide for duration open examinations and duration promotional examinations. Duration employment lists resulting therefrom shall not be used in making regular appointments. The regulations governing the conduct of regular examinations shall govern the conduct of duration examinations.
- C. Termination: All duration appointments, unless sooner terminated by layoff or other means of separation, shall terminate 90 days after the governor finds and proclaims that the emergency no longer exists.
- D. Restoration of veteran: Any person appointed to fill a vacancy existing through the induction or order of a probationary or permanent employee into the armed forces of the United States is hereby notified that such appointment is contingent upon restoration of the former employee as provided by these rules and A.R.S. § 38-298.

ARTICLE 7. GENERAL EMPLOYEE CONDUCT PROVISIONS

R13-5-40. General employee conduct provisions

- A. ~~Conduct of employees: Every employee shall fulfill to the best of his ability the duties of the office or position conferred upon him and shall prove himself in his behavior inside and outside the service worthy of the esteem which his office or position requires. In his official activities the employee shall pursue the common good, and, not only be impartial, but so act as neither to endanger his impartiality nor to give occasion for distrust to his impartiality.~~
- B. ~~Incompatible activity: An officer or employee shall not engage in any employment, activity, or enterprise unless it has been determined by the Council or the agency head not to be inconsistent, incompatible, or in conflict with his duties as an officer or employee or with the duties, functions or responsibilities of the agency head.~~
- C. ~~Attendance at Council meetings or examinations: Upon giving two days notice to his superior, any qualified employee shall be permitted to take any Council examination during working hours, if the examination is scheduled during such period, or to attend a meeting of the Council at which is scheduled for consideration a matter in which he is an interested party.~~
- D. ~~Voluntary demotion: Any employee may request voluntary demotion to a vacant position. If the class to which the demotion is proposed requires qualifications, knowledges or abilities not measured by the examination for the class from which demotion is proposed, the Business Manager shall provide for examination of the employee for the possession of those additional qualifications, knowledges and abilities. If there is evidence satisfactory to the agency head of the employee's fitness to perform the duties of the lower class, the agency head may demote the employee.~~
- E. ~~Assignment: Except in an emergency, an employee shall not be assigned to perform the duties of any class other than that to which his position is allocated.~~
- F. ~~Physical and psychological examinations: When there is probable cause to believe that an employee is not physically or psychologically able to perform the duties of his employment, the agency head may require a physical or psychological examination of the employee sufficient to indicate whether or not the employee is able to perform the duties of his employment. Information provided by the employee during the examination shall be treated as privileged unless waived by the employee, except that the examiner may provide to the agency head diagnosis, conclusions, recommendations, or any other information that is necessary to promote the welfare of the employee, department, or public. An employee who is required to submit to an examination shall be entitled to an appeal as provided in rule R13-5-10. The cost of such examination shall be a proper charge against the support appropriation of the agency.~~

R13-5-41. Report of employee performance

- A. ~~Purpose: The intent of supervisory evaluation of employee performance is to inform employees and the agency head how well employees carry out their assigned duties and responsibilities. Employees shall be informed of how well they perform their job requirements, and, if necessary, how they may improve such performance. The performance rating system shall permit, as accurately as is reasonably possible, the evaluation of employee performance of assigned duties.~~
- B. ~~Report of Employee Performance: Ratings shall be set forth in a Report of Employee Performance, the form of which shall be designated by the Council. The original report shall be maintained in the employee's personnel file. Copies of the report shall be furnished to the employee and the employee's supervisor.~~
- C. ~~Rating definitions:~~
 - 1. ~~"Exceeds standard", indicates that the employee exceeds the expected level of performance required to accomplish the objectives of the position being filled.~~
 - 2. ~~"Standard", indicates that the employee meets the expected level of performance required to accomplish the objectives of the position being filled.~~
 - 3. ~~"Below standard", indicates that improvement is needed for the employee's work performance to be fully satisfactory.~~
 - 4. ~~"Unacceptable", indicates that the employee's work performance is usually well below "standard" and improvement is urgently required.~~
- D. ~~Performance Appraisal Manual: A performance appraisal manual shall be prepared under the authority and approval of the Council and shall contain evaluation procedures, definitions and other information determined necessary by the Council. No modifications to the Performance Appraisal Manual shall be made without Council authorization.~~
- E. ~~Appeals:-~~
 - 1. ~~Upon review of his Report of Employee Performance, an employee may appeal the overall rating to the Council if the overall rating is below "standard"; if the overall rating would cause a reduction in pay; or if the overall rating would result in the withholding or postponement of salary adjustment.~~
- F. ~~Report periods:-~~
 - 1. ~~Each employee shall receive a written Report of Employee Performance at least once in each 12-month period.~~

R13-5-42. Annual leave

- A. ~~Authority: The agency head may grant leave with or without pay to any employee in accordance with these rules.~~
- B. ~~General provisions:~~

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1. Working days: An employee's leave time accounts for vacation or sickness shall not be charged with more than the hours per prescribed work cycle as provided by law during the employee's leave of absence for vacation or sick leave purposes.
2. Paid holidays: Employees shall be allowed to be absent with pay for any holiday designated by state law, unless required to work in order to maintain essential state services. Employees required to work on a state holiday shall be compensated as provided by law.
3. Recording leave: The agency shall install and maintain a system to record leave earned, leave taken and leave balances remaining in each leave category for each employee. Copies of such records may be distributed to employees and shall be available for inspection by employees upon request.
4. Leave requests: Leave shall be requested and approved in advance of the time when it is taken. The agency may establish reasonable procedures to govern emergency situations when advance approval cannot be obtained.
5. Transfers: An employee who transfers from one state service agency to a position subject to the jurisdiction of the Law Enforcement Merit System Council shall retain any accumulated annual and sick leave.
6. Computing length of service to determine rate of accrual: Only complete calendar months of service before and after interruptions or breaks in service shall be counted. In computing the total number of years of service by which an employee is allowed to progress from one graduated rate of accrual for annual leave to the next, the following rules shall apply:
 - a. Where the employee has been employed by the same agency without interruption or break in continuity of service, the date from which total years of service is counted shall be the first day of the first complete calendar month worked.
 - b. Periods during which the employee was employed in a nonelective position by any budget unit of the state shall be counted without regard to whether the position in which he was employed is or was a state service position.
 - c. Periods of service as a state employee prior to a break or interruption in continuity shall not be counted except when the break or interruption was less than 12 months' duration.
 - d. Where an employee's continuity of state service has been interrupted or broken by his being inducted or ordered into active military service in the Arizona National Guard or the armed forces of the United States, the period of military leave shall be counted as state service in computing his total number of years of service, provided he meets the requirements of state law and applies for restoration to position as therein provided.
 - e. Where an employee is absent under competent military orders pursuant to state law, such periods of time shall be counted as state service in computing his total number of years of service.
7. Effective date for change in accrual rate: An employee shall be allowed to progress from one graduated rate of accrual for annual leave to the next on the first day of the month immediately following completion of the required total length of service.
8. Maximum accumulation: An employee shall be permitted to accumulate annual leave provided that on January 1 of any year the total number of hours accumulated does not exceed 360. An employee shall be permitted to accumulate sick leave without limit. An employee may accumulate compensatory leave up to a total of 120 hours. This limit may be temporarily raised by the agency head during man power shortages for periods not to exceed six months.
9. Disposition of excess annual leave: Annual leave in excess of the maximum allowed under these rules shall be credited to the employee's sick leave accumulation. In situations which preclude the granting of sufficient annual leave to avoid disposition under this rule, the agency head may authorize a date other than January 1 for disposition of excess leave.
10. Transfer of annual leave: Within the agency, annual leave may be transferred by one employee to another provided all of the following conditions are satisfied:
 - a. The employee to whom the leave is transferred has a non job related, seriously incapacitating and extended illness or injury, or a member of his immediate family has a seriously incapacitating and extended illness or injury.
 - b. The employee to whom the leave is to be transferred has exhausted all available leave balances.
 - c. Any annual leave transfer from one employee to another will be added to the sick leave balance of the gaining employee and shall be excluded from any sick leave pay off authorized by state law for employees leaving agency service.
 - d. The dollar value of annual leave given up by an employee shall be determined and the amount of leave credited to the gaining employee shall be increased or decreased proportionally by the difference in salaries. The proportionate adjusted dollar value of the leave shall be determined by dividing the dollar amount of the annual leave donated, based upon the contributor's salary, by the recipient's hourly rate. The resulting number is the number of hours donated to the leave recipient.
 - e. If the leave recipient separates from the agency service or recovers prior to using all leave donated or the need for the leave is otherwise abated, all unused leave donated to the recipient is returned to the leave contributors on a pro rata basis or, at the donating employee's option, to any leave balance bank that may be created for the purposes of this subsection.

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- f. The Business Manager shall periodically review the procedures developed by the Department pursuant to this subsection to ensure that there is no abuse or misuse of the leave transfer process.
11. Disposition of leave upon termination: Upon termination of employment, each employee shall be compensated at the then current rate of pay for all unused annual and compensatory leave hours up to the maximum allowed by these rules. All unused sick leave credits shall be forfeited unless state law authorizes payment for all or any portion of such credits to retiring employees.
12. Restoration of sick leave credits upon reemployment: If an employee reenters agency service within 12 months of termination, he shall receive credit for 50% of any unused sick leave which was accumulated at the time of termination. The number of hours previously accumulated shall be reduced in proportion to any payment made pursuant to state law.
- C. Leave accumulation rates: Each full-time employee shall accumulate annual, sick and compensatory leave in accordance with the following schedules:
1. Annual leave:
- | Length of Service: | Monthly Accrual Rate: |
|-----------------------------------|-----------------------|
| Less than 7 years | 10 Hours |
| At least 7 but less than 15 years | 12 Hours |
| 15 years and over | 14 Hours |
- Part-time employees shall accumulate annual leave in proportion to the fraction of full-time hours worked, calculated to the nearest full hour.
2. Sick leave: Full-time employees shall accumulate sick leave credits at the rate of ten hours per month. Part-time employees shall accumulate sick leave in proportion to the fraction of full-time hours worked, calculated to the nearest full hour.
3. Compensatory leave: Employees may accumulate compensatory leave in lieu of overtime payment, when authorized by law or agency rules at the rate provided by law.
- D. Leave administration:
1. Annual leave: Each employee eligible to accrue annual leave credits pursuant to these rules may request and be granted use of accrued annual leave only after six months of service, except that accrued annual leave may be granted prior to six months of service by the agency head in addition to any accrued sick leave for illness or injury rendering the employee unable to perform his official duties or for other essential absences.
2. Sick leave: An employee entitled to sick leave shall be eligible to use accrued sick leave credits after completion of one month of employment. The agency shall approve sick leave only after having ascertained that the absence was for an authorized reason. The agency may require the employee to submit substantiating evidence including, but not limited to, a physician's certificate. If the agency does not consider the evidence adequate, it shall disapprove the request for sick leave. Sick leave shall be granted for any approved period of absence of an employee resulting from:
- a. Illness or injury which renders the employee unable to perform official duties;
- b. Medical examination, consultation, or treatment by a licensed practitioner;
- c. Attendance at the death or funeral of spouse, parent, child, brother or sister; or attendance of a sick family member. Except as provided in subsection (B)(10) of this rule, not more than five days of sick leave within any one calendar year may be granted for this purpose.
3. Compensatory leave: Employees eligible to accumulate compensatory leave may request and be granted the use of accrued compensatory leave in accordance with law or agency rules.
4. Civic duty leave: Civic duty leave shall include approved periods of absence with pay from regularly scheduled work while serving as a juror or casting one's vote pursuant to state law.
5. Jury duty: An employee summoned for duty as a juror shall appear as required for such duty. The agency shall require the employee on civic duty leave for jury duty either to remit his fees for such jury duty to the employing agency or shall make an equivalent deduction from the employee's salary. At all times during regular working hours when his presence as a juror is not officially required, he shall return to work until again called or finally released; except, however, that he shall not be required to return to work if, because of the remoteness of the location of such work, he cannot respond to a call to return to jury duty with timeliness or he cannot arrive at work at least one hour before the end of his regularly assigned work shift.
6. Military leave: Agency employees shall be provided all rights pertaining to leave for military or national guard duty as provided by state law.
7. Educational leave: The agency head is authorized to approve reasonable periods of absence with or without pay to enable employees to attend work related education and training courses. Agencies shall not, however, approve educational leave until the agency head has determined that the approval of such leave is in the best interest of the agency.
8. Administrative leave: Administrative leave shall include temporary periods of absence with pay authorized by the agency head in emergency situations. It may be used for the purpose of relieving an employee of his duties temporarily during the active investigation of an alleged wrongdoing by the employee. Administrative leave may also be based upon the executive declaration by the governor that a state of emergency, disaster or grief exists.

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9. Recognition leave: Recognition leave shall include a period of paid leave granted by the agency as an incentive to continued superior performance as documented through a formal employee incentive program.
10. Leave without pay: Leave without pay shall include any period of approved absence without pay for which an employee has made application.
 - a. Administration: Leave without pay may be granted for temporary periods of time when there is a reasonable expectation that the employee will return to work at the expiration of the leave.
 - b. Appointment to exempt positions: An employee may be granted leave without pay to accept appointment to an exempt, nonelective position in state government.
 - c. Reemployment: After full compliance with the conditions of and upon return from leave of absence, the employee shall be reemployed in his former classification.
11. Failure to return: The failure of an employee to return to his position, following a leave of absence with or without pay, or other inexcusable violation of the conditions of the leave of absence, shall constitute a voluntary resignation from agency service by the employee.
12. Termination of leave: A leave of absence for any reason is terminated by:
 - a. Expiration of the term thereof;
 - b. Inexcusable violation of the conditions thereof;
 - c. Revocation thereof by order of the agency head and written notice to the employee of such revocation;
 - d. Cancellation thereof by the employee with the approval of the agency head.

R13-5-43. Transfers

- A. Administrative decision:
 1. The agency head may at any time transfer any employee under his jurisdiction:
 - a. To another position in the same class; or
 - b. To another position in a different class designated as appropriate by the Business Manager; or
 - c. From one location to another whether in the same position or in a different position as specified above in (a) or (b).
 2. When a transfer reasonably requires an employee to change his place of residence, the agency head shall give the employee a written notice of transfer in advance of the effective date of the transfer.
- B. Protest: If a transfer is protested to the Council by an employee as made for the purpose of harassing or disciplining him, the agency head may require the employee to transfer pending approval or disapproval of the transfer by the Council. If the Council disapproves the transfer, the employee shall be returned to his former position and shall be paid the regular travel allowance for the period of time he was away from his original headquarters in addition to his moving costs both from and back to the original headquarters.
- C. Filing protest: A copy of the protest shall be filed with the agency head by the employee. Such a protest shall be made within ten days of the time the employee is notified of the transfer.
- D. Status of transferred employee: Transfer of an employee from one position to another in the same class shall not require a new probationary period. Transfer of a probationer under like circumstances shall require service of the remainder of the probationary period. Transfer of an employee from one class to another shall require the service of a new probationary period. Any employee rejected during such probationary period shall be re-employed in the position from which he transferred.
- E. Limitation: Any transfer of an employee from a position in a lower class to a position in a higher class is a promotion and any transfer of an employee from a position in a higher class to a position in a lower class is a demotion and may be accomplished only in the manner provided for making promotional or demotional appointments.
- F. Operation of new machinery: Whenever any position is changed by the adoption of new, different or additional machines or processes while the purpose or product is the same or similar in nature, any employee affected shall be given reasonable opportunity without change in class, status or salary to learn to do the work with the new machine or process and to qualify for status in the different class of position required for such work; provided that an employee may not be promoted to a higher class under the provisions of this section. An employee who qualifies for appointment in the different class shall be deemed to possess the specific education, experience or other requirements for such class and shall be appointed thereto with the same status and seniority which he last had in his previous class.

ARTICLE 8. GENERAL PERSONNEL PROVISIONS

R13-5-45. General personnel provisions

- A. Tenure: The tenure of every permanent employee holding a position is during good behavior. Any permanent employee may be temporarily separated from agency service through layoff, leave of absence, or suspension; permanently separated through resignation or removal for cause; or permanently or temporarily separated through retirement.
- B. Resignation: Resignations shall be in writing and made to the agency head. The agency head may accept or reject any resignation from an employee under his jurisdiction. A resignation shall waive all and any rights or privileges provided by these rules, unless otherwise provided for. No resignation shall be set aside on the ground that it was given or obtained

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pursuant to or by reason of mistake, fraud, duress, undue influence or that for any other reason it was not the free, voluntary and binding act of the person resigning unless a petition to set it aside is filed with the Council within ten days after the date upon which the resignation is accepted by the agency head. A resignation by the Director of the Department of Public Safety shall be made to the governor.

R13-5-46. Layoff and demotion

- A. Staff reduction: Whenever it is necessary because of lack of work or funds or whenever it is advisable in the interests of economy to reduce the staff, the agency head may lay off employees pursuant to this rule.
- B. Assignment of duties: The duties performed by any employees laid off may be assigned to any other employee or employees holding positions in appropriate classes.
- C. Layoff by district: Layoffs may be restricted to the employees of a particular district or section, and, if so restricted, re-employment lists shall be established for such districts or sections.
- D. Demotion in lieu of layoff: In lieu of layoff, an employee may request demotion to a position of lesser responsibility in the same line of work or to any class with the same or lower maximum salary in which he has previously served in probationary status. Whenever such a demotion requires a layoff in the lower class, the seniority score for the employee shall be recomputed in the lower class.
- E. Method: Layoff shall be made in accordance with the relative efficiency and seniority of the employees in the class of layoff. Except as otherwise provided by this rule, one point shall be allowed for each complete month of full time service in the class of layoff or demotion and in classes that, at the time notice of layoff is given, have the same or a higher maximum salary. One half point shall be allowed for each complete month of full time service in all other classes. Service that is less than full time shall receive seniority credit on a pro rata basis.
- F. Order of layoff when combined scores are equal: As between two or more employees having the same combined score for efficiency and seniority, the order of layoff shall be determined by giving preference for retention in the following sequence:
 - 1. Veteran;
 - 2. Employee with the highest overall report of performance rating;
 - 3. Employee with the greatest total calendar time in the class in which the layoff is being made and in classes with the same or higher maximum salary;
 - 4. Employee with the greatest total time in agency service;
 - 5. Employee with the greatest total calendar time in state service.
- G. Re-employment lists: The names of employees to be laid off or demoted shall be placed upon the re-employment lists for the class from which the employees were laid off or demoted.
- H. Notice of layoff: An employee shall be notified that he is to be laid off ten days prior to the effective date of the layoff. The notice of layoff shall be in writing and shall contain the reasons for the layoff.
- I. Appeal and hearing: An employee may appeal to the Council within ten days after receiving notice of layoff on the ground that the required procedure has not been complied with or that the layoff has not been made in good faith or was otherwise improper.

R13-5-47. Disciplinary proceedings

- A. Punitive action defined: As used in this rule, "punitive action" means dismissal from service, demotion to a lower class, rank or grade, suspension from duty without pay, deduction from vacation credit in lieu of suspension from duty without pay, withholding of merit salary adjustment, reduction to a lower salary step within the range, or other disciplinary action.
- B. Procedure: In conformity with this rule, punitive action may be taken against any employee or person whose name appears on any employment list for any cause for discipline specified in this rule.
- C. Causes for punitive action: Each of the following constitutes cause for discipline or discharge of an employee:
 - 1. Fraud or misrepresentation of any kind in securing appointment;
 - 2. Improper political activity as defined in rule R13-5-01;
 - 3. Misfeasance, malfeasance or nonfeasance, which shall include, but shall not be limited to:
 - a. Incompetency;
 - b. Inefficiency;
 - c. Inexcusable neglect of duty;
 - d. Insubordination or any willful disobedience;
 - e. Dishonesty or any breach of integrity;
 - f. Inexcusable absence without leave;
 - g. Disrespectful behavior toward a supervisor and/or supervisory directive.
 - 4. Physical or mental disability;
 - 5. Drinking or drunkenness on duty;
 - 6. Excessive intemperance at any time which would reflect discredit upon the agency;
 - 7. Addiction to the use of narcotics or habit-forming drugs.

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8. Conviction of a crime involving moral turpitude or intoxicating beverages;
 9. Any act of immorality which would bring the employee into disrepute or reflect discredit upon the agency;
 10. Discourteous treatment of the public or other employees;
 11. Any other failure of good behavior or acts either during or outside of duty hours which are incompatible with or inimical to the agency interest;
 12. Misuse of state property;
 13. Refusal to take and subscribe to any oath or affirmation which is required by law or Council rule in connection with his employment, or violation of such oath or affirmation after subscription;
 14. Renouncement of citizenship or allegiance to the United States; or the taking of an oath of allegiance or otherwise pledged allegiance to any foreign country;
 15. Violation of Council rules;
 16. Failure to appear or the refusal to testify or to waive immunity from any prosecution on account of any matter about which he may be asked to testify at any hearing or inquiry before the agency head, the Council or any person authorized to conduct any hearing or inquiry.
- D. ~~Who may take: The agency head, or any person authorized by him, may take effective punitive action against an employee for one or more of the causes for discipline specified in this rule by notifying the employee of the action, pending service upon him of a written notice.~~
- E. ~~Notice to be given: Punitive action is valid only if a written notice is served on the employee and filed with the Council not later than ten days after the date of such action. The notice shall be served upon the employee either personally or by mail and shall include:~~
1. ~~A statement of the nature of the punitive action;~~
 2. ~~The effective date of the action;~~
 3. ~~A general statement of the causes therefor;~~
 4. ~~A statement advising the employee of his right to answer the notice and the time within which that must be done if the answer is to constitute an appeal.~~
- F. ~~Answer: No later than ten days after service of the written notice of punitive action, the employee may file with the Council a written answer to the notice, which answer shall be deemed to be a denial to all the allegations of the notice of punitive action not expressly admitted and a request for hearing or investigation as provided in this rule. With the consent of the Council an amended answer may subsequently be filed. If the employee fails to answer within the time specified or after answer withdraws his appeal, the punitive action taken by the agency head shall be final. A copy of the employee's answer and of any amended answer shall promptly be given by the Council to the agency head. When the employee answers the notice of punitive action, any irregularity in the notice given to the employee is deemed to have been waived.~~
- G. ~~Amended notice of punitive action: At any time before an employee's appeal is submitted to the Council for decision, the agency head may serve on the employee and file with the Council an amended or supplemental notice of punitive action. If the amended or supplemental notice presents new causes, the employee shall be afforded a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further answer unless the Council so orders. Any new causes shall be deemed controverted, and any objections to the amended or supplemental causes may be made orally at the hearing or investigation and shall be noted in the record.~~
- H. ~~Hearings and investigations on suspension: Whenever an answer is filed within the time provided by an employee who has been suspended or has suffered a loss of pay of \$50 or less, the Council shall make an investigation without a hearing as it deems necessary; however, in the event the employee demands a hearing or such employee has suffered a loss or losses of pay totaling more than \$50, or \$100 in any calendar year, he shall be afforded a hearing within a reasonable time if he files an answer to the action.~~
- I. ~~Hearing: Whenever an answer is filed within the time provided to a punitive action other than a suspension without pay, the Council shall within a reasonable time hold a hearing.~~
- J. ~~Effect of dismissal: Dismissal of an employee from the service shall~~
1. ~~Constitute a dismissal as of the same date from any and all positions which the employee may hold in the service.~~
 2. ~~Result in automatic removal of the employee's name from any and all employment lists on which it may appear.~~
 3. ~~Terminate the salary of the employee as of the date of dismissal except that he shall be paid any unpaid salary, and paid for any and all unused or accumulated vacation and any and all accumulated compensating time off or overtime to his credit as of the date of dismissal.~~
- K. ~~Charges: Any person with the consent of the Council or the agency head may file charges against an employee requesting that punitive action be taken for one or more causes for discipline specified in this rule. The employee against whom such charges are filed shall have a right to answer as provided in this rule. In all such cases a hearing shall be conducted. If the Council finds that the charges are true, it shall direct the agency head to take such punitive action as in his judgment is just and proper.~~
- L. ~~Salary when punitive action is revoked: Whenever a punitive action is revoked and the appellant is ordered returned to his former position, the agency head shall direct the payment of salary to the appellant for such period of time as the punitive action was improperly in effect. An appellant alleging improper punitive action under these rules by seeking reinstatement~~

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after punitive action has been taken shall conform to the standards and regulations of conduct and action as prescribed by these rules and agency policies for applicants and employees in similar classifications until final disposition of his case is made. Violations of such standards, regulations and policies of conduct and action may be separate cause for punitive action and shall result in forfeiture of all salary claims.

- M. ~~Salary claim: Salary shall not be paid for any period of punitive action wherein the appellant was not ready, able, willing and available to perform the duties of his position; except, the appellant shall use due diligence to seek employment during such period the punitive action is in effect and any and all income shall be deducted from any amount due the appellant if the punitive action is revoked. The appellant shall file an affidavit of employment and income with the Business Manager if a salary claim is to be made by the appellant. The affidavit shall disclose the name of the appellant, the source of his income, if any, and total monthly income including earnings, unemployment benefits, workmen's compensation benefits, retirement or disability benefits, or any other income, if any; and in the event of non-employment, the affidavit shall also contain a statement of the reasons therefor. The affidavit shall be filed not later than the tenth day of each successive month and shall contain the details of the prior month of employment or non-employment and total income. Failure of the appellant to file such a complete and correct affidavit for each month the punitive action is in effect and in the manner and time prescribed shall result in forfeiture and denial of all salary claims.~~

~~R13-5-48. Retirement~~

~~MEMBERSHIP IN ARIZONA PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM~~

- ~~9.1.00 Director~~
- ~~9.1.01 Superintendent of the Arizona Highway Patrol~~
- ~~9.1.02 Division Chief~~
- ~~9.1.03 Assistant Superintendent of the Arizona Highway Patrol~~
- ~~9.1.04 Inspector~~
- ~~9.1.05 Major~~
- ~~9.1.15 Captain~~
- ~~9.1.16 Lieutenant~~
- ~~9.1.17 Sergeant~~
- ~~9.1.18 Corporal~~
- ~~9.1.19 Officer~~
- ~~9.1.21 Chief Pilot~~
- ~~9.1.22 Pilot~~
- ~~9.1.24 Attache to the Governor's Office~~
- ~~9.1.27 Helicopter Pilot~~
- ~~9.2.01 *Chief Communications Engineer~~
- ~~9.2.02 *Deputy Chief Communications Engineer~~
- ~~9.2.03 *Communications Engineer~~
- ~~9.2.04 *Chief Communications Technician~~
- ~~9.2.07 *Communications Technician~~
- ~~9.2.08 *Radio Rigger~~
- ~~9.2.11 *Radio Mechanic~~
- ~~9.2.12 *Senior Communications Engineer~~
- ~~9.2.13 *Junior Communications Engineer~~
- ~~9.2.15 *Data Communications Specialist~~
- ~~9.2.16 *Radio Rigger Supervisor~~
- ~~9.2.17 *Communications System Supervisor~~
- ~~9.2.18 *Lead Communications Technician~~
- ~~9.7.08 Legal Advisor~~
 - ~~* Employment prior to 1 December 1972~~

ARTICLE 9. REPEALED

~~R13-5-50. Repealed~~