

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

- 1. Sections Affected**

R3-4-204	Amend
R3-4-244	Amend
R3-4-245	Amend
- 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. § 3-107
Implementing statutes: A.R.S. §§ 3-201.01, 3-202, 3- 203, 3-204, 3-205, 3-205.01, 3-206, 3-207, 3-209, 3-210
- 3. The effective date of the rules:**

May 15, 2000
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notices of Rulemaking Docket Opening: 5 A.A.R. 3230, September 17, 1999; 5 A.A.R. 3710, October 8, 1999
Notice of Proposed Rulemaking: 6 A.A.R. 642, February 11, 2000
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

R3-4-204. This rulemaking allows the Southwest Indian Agricultural Association a representative on the advisory committee to make recommendations to the Department in areas concerning the pink bollworm and the boll weevil complex, and clarifies the small grain planting option.

R3-4-244 and R3-4-245. This rulemaking adds the pest, giant salvinia, to the regulated, restricted, and prohibited noxious weed lists to prevent entry or further infestation in the state.

On August 4, 1999, plants of *Salvinia molesta*, giant salvinia, were found in the Imperial National Wildlife Refuge, on the Colorado River. Giant salvinia, known as "the world's worst weed" threatens the Colorado River, its backwaters, fish and wildlife habitat, and the Bill Williams River.

Under ideal conditions, giant salvinia can double its volume every 2.5 to 8 days, depending on the fertility and temperature of the water. In 1993, 36 tons per acre were documented at 1 lake. In quiet waters the weed can form a mat up to 2 feet thick. This may impede boat traffic along the river and in the backwaters where eddies form. Loss of water through evapo-transpiration from giant salvinia may be as much as 40% greater than an open body of water. This increased loss of water could lead to an additional 2 to 3 feet of water loss from the river. If permitted to grow uncontrolled for even 1 growing season, the weed would destroy the benthic community, affecting fish populations and other species that depend on the aquatic ecosystem. Weed growth may impact recreational fishing and boating, irrigation, waterfowl habitat, water availability and use, and hydroelectric generation.

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In addition to its direct impact, giant salvinia provides habitat for snails that are intermediate hosts for *Schistosoma* sp., parasites of the human intestinal and urinary tracts. The weed is also an important host plant for *Mansoni* mosquitoes that serve as vectors for rural filariasis.

Giant salvinia is native to Central and South America. It has been distributed worldwide and sold for use in aquariums and aqua-gardens. In 1998, it was found in south Texas and has spread to Toledo Bend Reservoir on the Louisiana/Texas border. Infestations are now found in Florida, Georgia, Alabama, Louisiana, Texas, Arizona, and California. A recent survey in California reveals that it is being sold as an aquarium and ornamental pond plant at numerous sites, despite the fact that it is on the Federal Noxious Weed list and is illegal to sell in California. It is also sold in Arizona as a water plant.

Giant Salvinia is infesting other countries, blocking critical transportation waterways and destroying fisheries. It causes serious problems in Australia, where both chemical and biological control agents have been used.

On August 20, 1999, teams surveyed the Colorado River and associated waterways. The survey concludes that the infestations are not continuous along the River but scattered over the area. Some backwater areas have been closed to prevent infestation. Infestations were found scattered along 37 miles of the Colorado River main channel, along approximately 25 miles of the Old River Channel, and along the Palo Verde Irrigation Drain. Infestations were found on both Cibola and Imperial National Wildlife Refuges, with both refuges reporting that approximately 60% of their backwaters with low level infestations. No giant salvinia was found on the Colorado River above where the Old River Channel enters the Colorado River.

As a result of the survey, a Task Force was established to determine what Program Plan is needed to identify the problem and any alternative approaches to address this infestation.

7. A reference to any study that the agency relied on in its evaluation of or justification for the 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

8. 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:

Not applicable

9. The summary of the economic, small business, and consumer impact:

R3-4-204. The rulemaking expands the advisory committee and clarifies the small grain planting option.

R3-4-244 and R3-4-245. The Bureau of Reclamation, the Bureau of Land Management, and the Fish and Wildlife Service have begun short-term control actions for giant salvinia. On October 6, 1999, the Department issued a permit to the U.S. Department of Interior, Bureau of Land Management allowing them to dispose of giant salvinia in an Arizona landfill. Section 10 permit applications have been submitted to the Corps of Engineers for boom placement. Some federal agencies purchased equipment and herbicides for control of giant salvinia. California will initiate an integrated approach to remove it from the Palo Verde Irrigation District Drain in order to stop its movement downstream.

Complicating the removal of giant salvinia is the presence of endangered species of animals such as the Colorado pikeminnow, bonytail, and razorback. Giant salvinia has been documented to degrade water quality by lowering oxygen concentrations and pH levels and preventing mixing of water by wind action and normal gas exchange at the water surface. Access to preferred habitats for spawning and nursery areas become physically blocked. Birds, such as the Southwestern Willow Flycatcher and Yuma Clapper Rail, may suffer if the native plants that their habitat requires are affected.

The Lower Colorado River supplies nearly 10 million acre feet of water each year for national and international users. Eight U.S. irrigation districts use irrigation water from the infested area to water 8 million acres of farmland. At least 1.5 million acre feet of water is supplied to Mexico for use on 250,000 acres of farmland. These facilities could be severely impacted by an infestation of giant salvinia. If giant salvinia infests Lakes Mead, Mohave, or Havasu, any failure to take action would result in the continued spread of the plant and the ultimate devastation of the Colorado River aquatic ecosystem and all species and human activities that depend on it. Ecosystem damage includes losses of submergent and emergent vegetation, benthic organisms that depend on that vegetation, and loss of food resources and habitat for fish. It includes loss of recreational opportunities, such as fishing, boating, water skiing, shoreline recreational activities, along with related economic losses from local business that cater to those users. Blockage of irrigation intakes and eventual reduction in the available water could result.

Infestations of giant salvinia forming as plants floating down the river get caught in slower moving waters near the shore and among emergent vegetations, particularly cattails and bulrush. As the pocket infestations grow, they expand into faster moving water where they break off and move downstream to colonize new areas.

Salvinia control in and among main channel shoreline emergent vegetation will be very difficult because:

1. The emergent vegetation will make it difficult to get at the pocket infestations for any kind of control;
2. Physical removal in and among dense cattails and bulrushes will be virtually impossible;

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3. Chemical control could damage or kill emergent vegetation, could harm important Yuma clapper rail habitat and fish habitat or kill fish;
4. Total removal of infestations among shoreline vegetation may be impossible; and
5. The control of innumerable infestations using physical or chemical means will be extremely costly in both manpower and materials over the long haul.

Some backwater areas are accessible only by canoe or kayak, making treatment difficult. Wave action resulting from recreational boating will break off pieces from shoreline mats, and fishing boats will spread them to uninfested backwater areas.

A. Estimated Costs and Benefits to the Arizona Cotton Research and Protection Council.

R3-4-204. No enforcement changes have been made. The Department will not be economically impacted by this rulemaking.

R3-4-244 and R3-4-245. The Department is advising aquatic stores that the sale of giant salvinia is illegal.

If the state becomes infested with giant salvinia, the Department will set up a quarantine program and mount an aggressive campaign to monitor and eradicate the pest. Actual costs are unknown. However, the following figures represent treatment and removal costs experienced by the giant salvinia infestation in Texas:

- Hand removal of well-established salvinia infestations at 36 tons per acre could exceed \$800 per acre;
- Boats and land based equipment, \$17,000 to \$100,000 each;
- A conveyor system that removes the plant from an intake area, several hundred-thousand dollars per year;
- Chemical costs from \$12 - \$1,400 per acre plus labor and equipment at approximately \$205 - \$927 per acre;

1. Educational costs, \$42,300:

- a. Film costs for sub-masters used for television broadcast, \$5,000 (one time expense);
- b. Film costs for training and meetings, \$1,050;
- c. Labor for packaging and mailing videos, \$500;
- d. Preparing and duplicating high quality information packets, \$12,000;
- e. Designing and coordinating educational materials and activities, plus half-time biologist, \$20,000;
- f. Boat ramp education and inspections, signs for posting \$1,000;

2. Inspections at public boat ramps, including two full-time technicians (seasonal), \$50,000:

3. Treatment of the 12,000 miles of Toledo Bend shoreline, \$929,174:

- a. Herbicides, \$270,000;
- b. Salaries and fringe benefits (2 biologists and 6 technicians) \$314,235;
- c. Operating expense (fuel, electricity, telephone, heat, safety equipment, etc.), \$104, 939;
- d. Per diem cost (500 man-days in the field), \$40,000;
- e. Three airboats and spray equipment, \$90,000;
- f. Three boats and motors, \$60,000;
- g. Four trucks, \$50,000;

4. Computers and related equipment, \$10,000:

5. Biological releases, \$272,500:

- a. Estimated initial testing, release, and establishment, \$100,000;
- b. Estimated monitoring costs after establishment, \$100,000;
- c. Equipment (1 airboat, 1 boat, 1 truck), \$72,500;

6. Physical barriers, \$50,000:

- a. Estimated costs of barriers, \$40,000;
- b. Labor \$10,000.

B. Estimated Costs and Benefits to Political Subdivisions.

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

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C. Businesses Directly Affected By the Rulemaking. (Cotton Growers)

R3-4-204. The rulemaking will allow the Southwest Indian Agricultural Association a representative on the advisory committee to make recommendations to the Department in areas concerning the pink bollworm and the boll weevil complex.

Subsection (E)(4)(a) provides a grower the option to plant wheat, barley, or oats after a cotton harvest instead of tilling. This subsection also mentions that the grower may plant a similar small-grain crop if the small-grain is approved in writing by the Director. By including this additional option in the same sentence as the listed and approved small grain crops, the growers now believe that they need to obtain the Director's approval if they want to plant any small-grain crop. Subsection (E)(4)(b) currently covers approval of small grain crops not included in subsection (E)(4)(a), thus this option has been deleted from subsection (E)(4)(a).

R3-4-244 and R3-4-245. If aquatic stores are involved in the sale of giant salvinia to 2% of the households in the Valley, approximately 10,000 sales at \$2.00 each would be affected for a \$20,000 annual market.

D. Estimated Costs and Benefits to Private and Public Employment.

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. Estimated Costs and Benefits to Consumers and the Public.

R3-4-204. Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

R3-4-244 and R3-4-245. Eight U.S. irrigation districts use irrigation water from the infested area to water eight million acres of farmland. This irrigation water could infest irrigation ditches where blockage of irrigation intakes could result in an eventual reduction in the available water.

If giant salvinia infests Lakes Mead, Mohave, or Havasu, any failure to take action would result in the continued spread of the plant and the ultimate devastation of the Colorado River aquatic ecosystem and all species and human activities that depend on it.

If permitted to grow uncontrolled for 1 growing season, the ecosystem damage would impact fishing, boating, water skiing, shoreline recreational activities, and create economic losses in local business.

F. Estimated Costs and Benefits to State Revenues.

R3-4-204. This rulemaking will have no impact on state revenues.

R3-4-244 and R3-4-245. This rulemaking will have no impact on state revenues unless the state becomes infested with giant salvinia; then the cost would be borne by general funds.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor grammatical changes were made at the request of the G.R.R.C. staff.

11. A summary of the principal comments and the agency response to them:

None

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

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

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION**

ARTICLE 2. QUARANTINE

Section

R3-4-204. Pink Bollworm and the Cotton Boll Weevil Complex
R3-4-244. Regulated and Restricted Noxious Weeds
R3-4-245. Prohibited Noxious Weeds

ARTICLE 2. QUARANTINE

R3-4-204. Pink Bollworm and the Cotton Boll Weevil Complex

- A. No change.
- B. No change.
- C. No change.
- D. No change.
- E. Cultural practices.
 - 1. Arizona's cultural zones are:
 - a. Zone "A" -- Yuma County west of a line extended directly north and directly south of Avenue 58E.
 - b. Zone "B" -- Cochise County, Graham County, and Greenlee County.
 - c. Zone "C" -- Mohave County, La Paz County, except the Cibola Valley, and T6N, R11W, 12W, 13W; T5N, R13W; T4N, R12W, 14W, 15W; T3N, R10W, 11W; T2N, R11W.
 - d. Zone "D" -- Pima County and the following portions of Pinal County: T10S, R10E, sections 34, 35 and 36, T10S, R11E, section 31, T7S, R16E, T6S, R16E, T5S, R15E, and T4S, R14E, and the Aguila area T7N, R8W and T7N, R9W and T7N, R10W and T7N, R11W to the western boundary of section 35, 26, and 23.
 - e. Zone "E" -- The following portions of La Paz County: Cibola Valley T1N, R23W and T1N, R24W and T1S, R23W and T1S, R24W.
 - f. Zone "F" -- All portions of the state not included in Zones "A", "B", "C", "D", and "E."
 - 2. No stub, soca, or volunteer cotton shall be grown in or allowed to grow in the state. The landowner shall be responsible for eliminating stub, soca, or volunteer cotton.
 - 3. Tillage deadline. Except as provided in subsection (E)(4), a grower shall ensure that a crop remnant of a host plant remaining in the field after harvest is shredded and the land tilled to destroy the host plant and its root system so no stalks remain attached to the soil before the following dates or before planting another crop, whichever occurs earlier:
 - Zone "A", December 15;
 - Zone "B", March 1;
 - Zone "C", January 15;
 - Zone "D", March 1;
 - Zone "E", January 31;
 - Zone "F", February 15.
 - 4. Rotational crop following cotton harvest.
 - a. If a grower elects to plant a small-grain crop following a cotton harvest, the grower may, after the host plant is shredded, irrigate and plant with wheat, barley, or oats, ~~or other similar small grain crop approved in writing by the Director~~ instead of ~~shredding and~~ tilling as prescribed in subsection (E)(3). The small-grain crop shall be planted before the following dates:
 - Zone "A", December 30;
 - Zone "B", March 1;
 - Zone "C", January 30;
 - Zone "D", March 1;
 - Zone "E", January 31;
 - Zone "F", February 15.
 - b. The Director shall approve other small-grain crops not specifically listed in subsection (E)(4)(a), if the planting, growth, and harvest cycles of the small-grain crop prevents the maturation of stub, soca, or volunteer cotton. A grower shall submit a written request for approval of a small-grain crop, other than wheat, barley, or oats, at least 30 days before the planting date. The written request shall include the scientific and common name of the proposed small-grain crop and the estimated date of harvest.
 - c. If a grower elects to plant a crop other than an approved small-grain crop following a cotton harvest, the requirements specified in subsection (E)(3) apply.
 - 5. Planting dates.
 - a. A grower who meets the tillage deadline specified in subsection (E)(3) for the preceding cotton crop year shall not plant cotton before the following dates:
 - Zone "A", February 1;
 - Zone "B", March 15;
 - Zone "C", March 1;
 - Zone "D", March 15;
 - Zone "E", March 1;
 - Zone "F", March 1.
 - b. A grower who does not meet the tillage deadline specified in subsection (E)(3) for the preceding cotton crop year shall not plant cotton before the following dates:
 - Zone "A", February 15;

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Zone "B", March 15;
Zone "C", March 15;
Zone "D", March 15;
Zone "E", March 1;
Zone "F", March 1.

6. Dry planting. Any grower who uses the practice of dry planting may plant cotton 10 days before the planting date for that zone, but shall not water until the planting date.
 7. An inspector shall give written notice to any landowner found in violation of subsection (E). The processes established in subsections (E)(3) and (E)(4) shall be repeated, as necessary, to destroy the pests.
- F. Advisory Committee. The Director shall appoint an advisory committee consisting of 1 representative from each of the following organizations and the committee shall make recommendations to the Department on amendments to this Section:
- The Arizona Cotton Growers Association,
The Arizona Farm Bureau Federation,
The Arizona Crop Protection Association,
The Southwest Indian Agricultural Association,
The University of Arizona Experiment Station,
The University of Arizona Extension Service,
USDA-Research,
USDA-APHIS,
The Arizona Department of Agriculture, and
A grower from each of the 6 zones.

R3-4-244. Regulated and Restricted Noxious Weeds

- A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, the following terms apply to this Section:
1. "Habitat" means any aquatic area within Arizona, such as canals, drainage ditches, ponds, and lakes.
 - ~~1-2.~~ "Infested area" means each individual container in which a pest is found or the specific area that harbors a pest.
 - ~~2-3.~~ "Regulated pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable, and ornamental seed for planting purposes), found within the state may be controlled to prevent further infestation or contamination:
Cenchrus echinatus L. -- Southern sandbur,
Cenchrus incertus M.A. Curtis -- Field sandbur,
Convolvulus arvensis L. -- Field bindweed,
Eichhornia crassipes (Mart.) Solms -- Floating waterhyacinth,
Medicago polymorpha L. -- Burclover,
Portulaca oleracea L. -- Common purslane,
Tribulus terrestris L. -- Puncturevine.
 - ~~3-4.~~ "Restricted pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), found within the state shall be quarantined to prevent further infestation or contamination:
Acroptilon repens (L.) DC. -- Russian knapweed,
Aegilops cylindrica Host. -- Jointed goatgrass,
Alhagi pseudalhagi (Bieb.) Desv. -- Camelthorn,
Cardaria draba (L.) Desv. -- Globed-podded hoary cress (Whitetop),
Centaurea diffusa L. -- Diffuse knapweed,
Centaurea maculosa L. -- Spotted knapweed,
Centaurea solstitialis L. -- Yellow starthistle (St. Barnaby's thistle),
Cuscuta spp. -- Dodder,
Eichhornia crassipes (Mart.) Solms -- Floating waterhyacinth,
Elytrigia repens (L.) Nevski -- Quackgrass,
Euryops sunbcarnosus subsp. *vulgaris* -- Sweet resinbush,
Halogeton glomeratus (M. Bieb.) C.A. Mey -- Halogeton,
Helianthus ciliaris DC. -- Texas blueweed,
Ipomoea triloba L. -- Three-lobed morning glory,
Linaria genistifolia var. *dalmatica* -- Dalmation toadflax,
Onopordum acanthium L. -- Scotch thistle,
Salvinia molesta -- Giant salvinia
- B. Area under quarantine: All infested areas within the state.
- C. The following commodities are hosts or carriers of the regulated or restricted pest:
1. All plants other than those categorized as a regulated or restricted pest;

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2. Forage, straw and feed grains;
 3. Live and dead flower arrangements;
 4. Ornamental displays; ~~and~~
 5. Aquariums; and
 - ~~5-6.~~ Any appliance, construction or dredging equipment, boat, boat trailer or related equipment, or any other vehicle with soil attached or carrying plant debris.
- D.** The Department may quarantine any commodity, habitat, or area infested or contaminated with a regulated pest and notify the owner or carrier of the restrictions and treatments listed in subsections (F) and (G). If the regulated pest is not quarantined, the Department shall provide the grower with technical information on effective weed control activities through integrated pest management.
- E.** The Department shall quarantine any commodity, habitat, or area infested or contaminated with a restricted pest and shall notify the owner or carrier of the restrictions and treatments of the pest listed in subsections (F) and (G).
- F.** Restrictions.
1. No regulated or restricted pest or commodity infested or contaminated with a regulated or restricted pest shall be moved to a non-infested area unless the Director issues a permit for the transporting or propagating of the pest.
 2. An owner or the owner's representative shall notify the Department at least 2 working days in advance of moving contaminated equipment from an infested area.
 3. The Department may inspect all equipment within 2 working days after a request to inspect the equipment is made if the equipment:
 - a. Has been moved into or through a non-infested area,
 - b. Has not been treated, or
 - c. Has been used to harvest an infested crop within the past 12 months.
- G.** Treatments.
1. An owner or the owner's representative shall treat all soil and debris from equipment used in a quarantined area until it is free of the regulated or restricted pest before the equipment is moved. Removal or destruction of the restricted or regulated pest shall be accomplished through 1 of the following methods:
 - a. Autoclaving;
 - i. Dry heat. The commodity shall be heated for 15 minutes at 212°F.
 - ii. Steam heat. The commodity shall be heated for 15 minutes at 212°F.
 - b. Fumigating with ethylene oxide, chamber only: The commodity shall be fumigated with 1,500 mg/L for 4 hours in a chamber pre-heated to 115-125°F;
 - c. High pressure water spray;
 - d. Crushing;
 - e. Incinerating; or
 - f. Burying in a sanitary landfill to a depth of 6 feet.
 2. An owner or the owner's representative shall treat an infested area or habitat, including the area within the crop, rangeland, ~~ditchbank~~, roadside, or private property, ~~or body of water~~, with treatments based on an integrated pest management program appropriate to the commodity. The treatments shall take place under the direction of an inspector and shall include:
 - a. Reshipment from the state;
 - b. Manual removal;
 - c. Application of a herbicide;
 - d. Biological control including insects, fungi, nematodes, or microbes; or
 - e. Any other treatment approved by the Director.

R3-4-245. Prohibited Noxious Weeds

- A.** Definition. In addition to the definitions provided in A.R.S. § 3-201, the following apply to this Section:
1. "Habitat" means any aquatic area within Arizona, such as canals, drainage ditches, ponds, and lakes.
 - ~~1-2.~~ "Infested area" means each individual container in which a pest is found, the specific area that harbors the pest, or any shipment that has not been released to the receiver and is infested with a pest.
 - ~~2-3.~~ "Pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), that are prohibited from entering the state:
 - ~~a.~~ *Acroptilon repens* (L.) DC. -- Russian knapweed,
 - ~~b.~~ *Aegilops cylindrica* Host. -- Jointed goatgrass,
 - ~~c.~~ *Alhagi pseudalhagi* (Bieb.) Desv. -- Camelthorn,
 - ~~d.~~ *Alternanthera philoxeroides* (Mart.) Griseb. -- Alligator weed,
 - ~~e.~~ *Cardaria pubescens* (C.A. Mey) Jarmolenko -- Hairy whitetop,
 - ~~f.~~ *Cardaria chalepensis* (L.) Hand-Muzz -- Lens podded hoary cress,
 - ~~g.~~ *Cardaria draba* (L.) Desv. -- Globed-podded hoary cress (Whitetop),
 - ~~h.~~ *Carduus acanthoides* L. -- Plumeless thistle,

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- i- *Cenchrus echinatus* L. -- Southern sandbur,
- j- *Cenchrus incertus* M.A. Curtis -- Field sandbur,
- k- *Centaurea calcitrapa* L. -- Purple starthistle,
- l- *Centaurea iberica* Trev. ex Spreng. -- Iberian starthistle,
- m- *Centaurea squarrosa* Willd. -- Squarrose knapweed,
- n- *Centaurea sulphurea* L. -- Sicilian starthistle,
- o- *Centaurea solstitialis* L. -- Yellow starthistle (St. Barnaby's thistle),
- p- *Centaurea diffusa* L. -- Diffuse knapweed,
- q- *Centaurea maculosa* L. -- Spotted knapweed,
- r- *Chondrilla juncea* L. -- Rush skeletonweed,
- s- *Cirsium arvense* L. Scop. -- Canada thistle,
- t- *Convolvulus arvensis* L. -- Field bindweed,
- u- *Coronopus squamatus* (Forsk.) Ascherson -- Creeping wartcress (Coronopus),
- v- *Cucumis melo* L. var. *Dudaim* Naudin -- Dudaim melon (Queen Anne's melon),
- w- *Cuscuta* spp. -- Dodder,
- x- *Drymaria arenarioides* H.B.K. -- Alfombrilla (Lightningweed),
- y- *Eichhornia azurea* (SW) Kunth. -- Anchored waterhyacinth,
- z- *Elytrigia repens* (L.) Nevski -- Quackgrass,
- aa- *Euphorbia esula* L. -- Leafy spurge,
- bb- *Halogeton glomeratus* (M. Bieb.) C.A. Mey -- Halogeton,
- cc- *Helianthus ciliaris* DC. -- Texas blueweed,
- dd- *Hydrilla verticillata* Royale -- Hydrilla (Florida-elodea),
- ee- *Ipomoea* spp. -- Morning glory.
All species except *Ipomoea carnea*, Mexican bush morning glory; *Ipomoea triloba*, 3-lobed morning glory (which is considered a restricted pest); and *Ipomoea aborescens*, morning glory tree,
- ff- *Ipomoea triloba* L. -- Three-lobed morning glory,
- gg- *Isatis tinctoria* L. -- Dyers woad,
- hh- *Linaria genistifolia* var. *dalmatica* -- Dalmation toadflax,
- ii- *Lythrum salicaria* L. -- Purple loosestrife,
- jj- *Medicago polymorpha* L. -- Burclover,
- kk- *Nassella trichotoma* (Nees.) Hack. -- Serrated tussock,
- ll- *Onopordum acanthium* L. -- Scotch thistle,
- mm- *Orobanche ramosa* L. -- Branched broomrape,
- nn- *Panicum repens* L. -- Torpedo grass,
- oo- *Peganum harmala* L. -- African rue (Syrian rue),
- pp- *Portulaca oleracea* L. -- Common purslane,
- qq- *Rorippa austriaca* (Crantz.) Bess. -- Austrian fieldcress,
Salvinia molesta – Giant Salvinia,
- rr- *Senecio jacobaea* L. -- Tansy ragwort,
- ss- *Solanum carolinense* L. -- Carolina horsenettle,
- tt- *Sonchus arvensis* L. -- Perennial sowthistle,
- uu- *Solanum viarum* Dunal -- Tropical Soda Apple,
- vv- *Stipa brachychaeta* Godr. -- Puna grass,
- ww- *Striga* spp. -- Witchweed,
- xx- *Trapa natans* L. -- Water-chestnut,
- yy- *Tribulus terrestris* L. -- Puncturevine.

- B. Area under quarantine: All states, districts, and territories of the United States except Arizona.
- C. The following commodities are hosts or carriers of the pest:
 - 1. All plants and plant parts other than those categorized as a pest;
 - 2. Forage, straw, and feed grains;
 - 3. Live or dead flower arrangements;
 - 4. Ornamental displays; ~~and~~
 - 5. Aquariums; and
 - 56. Any appliance, construction or dredging equipment, boat, boat trailer, or related equipment, or any other vehicle with soil attached or carrying plant debris.
- D. The Department shall quarantine any commodity, ~~habitat, or area~~ infested or contaminated with a pest and shall notify the owner or carrier of the methods of removing or destroying the pest from the commodity, habitat, or area. The Department shall reject any shipment not released to the receiver and reship to the shipper.
- E. Restrictions:

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1. No pest or commodity infested or contaminated with a pest shall be admitted into the state unless the Director issues a permit for the transporting or propagating of ~~such~~ the pest.
2. The Department shall regulate the movement of the commodity out of a quarantined area within the state until the pest is eradicated. Any shipment or lot of a commodity infested or contaminated with a pest arriving in the state in violation of this quarantine shall, ~~pursuant~~ according to A.R.S. § 3-205(A), be immediately reshipped from the state, or ~~be~~ treated or destroyed using 1 of the following methods:
 - a. ~~Fumigating with ethylene oxide, chamber only.~~ The commodity shall be fumigated with 1,500 mg/L of ethylene oxide for 4 hours in a chamber pre-heated to 115-125°F;
 - b. Incinerating;
 - c. Burying in a sanitary landfill to a depth of 6 feet;
 - d. Application of a herbicide; or
 - e. Any other treatment approved by the Director.

NOTICE OF FINAL RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

PREAMBLE

1. Sections Affected

Rulemaking Action

Article 1	New Article
R13-5-101	New Section
R13-5-102	New Section
R13-5-103	New Section
R13-5-104	New Section
Article 2	New Article
R13-5-201	New Section
R13-5-202	New Section
R13-5-203	New Section
R13-5-204	New Section
Article 3	New Article
R13-5-301	New Section
R13-5-302	New Section
R13-5-303	New Section
R13-5-304	New Section
R13-5-305	New Section
R13-5-306	New Section
R13-5-307	New Section
R13-5-308	New Section
R13-5-309	New Section
R13-5-310	New Section
R13-5-311	New Section
R13-5-312	New Section
R13-5-313	New Section
R13-5-314	New Section
R13-5-315	New Section
R13-5-316	New Section
R13-5-317	New Section
Article 4	New Article
R13-5-401	New Section
R13-5-402	New Section
R13-5-403	New Section
Article 5	New Article
R13-5-501	New Section
R13-5-502	New Section
R13-5-503	New Section
R13-5-504	New Section
R13-5-505	New Section
R13-5-506	New Section
R13-5-507	New Section
R13-5-508	New Section

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R13-5-509	New Section
R13-5-510	New Section
R13-5-511	New Section
R13-5-512	New Section
R13-5-513	New Section
Article 6	New Article
R13-5-601	New Section
R13-5-602	New Section
Article 7	New Article
R13-5-701	New Section
R13-5-702	New Section
R13-5-703	New Section
R13-5-704	New Section
R13-5-705	New Section
Article 8	New Article
R13-5-801	New Section
R13-5-802	New Section
R13-5-803	New Section
R13-5-804	New Section

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)(3)

Implementing statutes: A.R.S. § 41-1714, 41-1830.11, 41-1830.12, 41-1830.13, and 41-1830.14

3. The effective date of the rules:

May 10, 2000

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 2 A.A.R. 829, January 26, 1996

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

Notice of Proposed Rulemaking: 5 A.A.R. 2486, August 6, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 2644, August 13, 1999

Notice of Supplemental Proposed Rulemaking: 5 A.A.R. 4617, December 17, 1999

5. 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

Telephone: (602) 223-2286

Fax: (602) 223-2096

6. An explanation of the rules, including the agency's reasons for initiating the rules:

The Law Enforcement Merit System Council (Council) is proposing to repeal its present rules and concurrently replace the old rules with new rules. The present rules were adopted in 1968 and have undergone minor revisions since then, but 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. The new rules will incorporate applicable federal regulations and some of the Council's past interpretations of the rules. The new rules will establish a comprehensive personnel system that can be applied to any agency brought under the purview of the Law Enforcement Merit System Council.

7. A reference to any study that the agency relied on in its evaluation of or justification for the 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

8. 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

9. The summary of the economic, small business, and consumer impact:

Repeal of the Council's outdated administrative rules and establishing new administrative rules will result in additional costs to the Department of Public Safety due to the increase in annual leave benefits and in allowing the retention of accrued sick leave upon transfer from another state agency. The change in the retention of accrued sick leave benefits will bring the Department of Public Safety in line with the current rules of the Department of Administration, State Personnel Division. This will enhance the Department's ability to recruit qualified candidates who have previous state service. The rules will not apply to small businesses or consumers, but will apply to agency employees and applicants for employment. Revisions to the rules will improve readability and make the rules easier to use.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

There are no substantive changes between the proposed rules (including supplemental notices) and the final rules. Minor technical and grammatical changes have been made at the suggestion of the G.R.R.C. staff.

11. A summary of the principal comments and the agency response to them:

The notice of proposed rulemaking was published in the Register on August 13, 1999. Included in the Notice for Proposed Rulemaking was a notice of a public meeting on September 22, 1999 and notification of where written comments could be sent.

At the public meeting on September 22, 1999, the attorneys for the AHPA appeared and presented several concerns to LEMSC. These recommended changes and the LEMSC decision concerning these recommendations are found in the Concise Explanatory Statement. As a result of this meeting several changes were made in the rules, some amounting to substantial changes necessitating publication of a Notice of Supplemental Rulemaking on December 17, 1999.

Following the meeting on September 22, 1999, written comments were received from two employees of the Department expressing concern over two different areas of the rules. Since the record had not been closed by LEMSC at the September 22, 1999, meeting, another public meeting was scheduled and held on November 18, 1999 to discuss the two issues brought forth. These written comments and the LEMSC action on these recommendations are also addressed in the Concise Explanatory Statement submitted with these rules. LEMSC did not make any changes in the rules based on this meeting. LEMSC did close the record at the conclusion of this meeting.

The Notice of Supplemental Rulemaking included a statement to the effect that if there were no written comments or a request for a public meeting, the record would be closed on January 21, 2000. No comments were received and no request for a public meeting was made. The record was closed on January 21, 2000.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

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

Fair Labor Standards Act, 29 U.S.C. § 201-219; § 251-262 (1938)

R13-5-101(37), (39), (54); R13-5-201(A)(40); R13-5-203(e)

Family and Medical Leave Act of 1993, 29 CFR Part 825, et seq.

R13-5-101(40); R13-5-513(K)

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

ARTICLE 1. GENERAL PROVISIONS

Section

R13-5-101. Definitions

R13-5-102. Law Enforcement Merit System Council

R13-5-103. Personnel Administration

R13-5-104. General Information

ARTICLE 2. CLASSIFICATION AND COMPENSATION

Section

R13-5-201. Classification

R13-5-202. Compensation

R13-5-203. Pay Administration

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R13-5-204. Work Hours and Work Options

ARTICLE 3. EMPLOYMENT

Section

R13-5-301. Recruitment
R13-5-302. Examinations
R13-5-303. Applicant Preference Points
R13-5-304. Employment
R13-5-305. Promotion
R13-5-306. Reassignment
R13-5-307. Reinstatement
R13-5-308. Hiring Preference
R13-5-309. Selection
R13-5-310. Pre-employment Processing
R13-5-311. Appointments
R13-5-312. Limited Term Appointments
R13-5-313. Provisional Appointments
R13-5-314. Intermittent Appointments
R13-5-315. Employee Conduct
R13-5-316. Probation
R13-5-317. Performance Evaluations

ARTICLE 4. ASSIGNMENTS

Section

R13-5-401. Special Duty Assignments
R13-5-402. Uncovered Appointments
R13-5-403. Transfer of External Functions

ARTICLE 5. EMPLOYEE LEAVE

Section

R13-5-501. Employee Leave Guidelines
R13-5-502. Administrative Leave
R13-5-503. Annual Leave
R13-5-504. Civic Duty Leave
R13-5-505. Compensatory Leave
R13-5-506. Donated Annual Leave
R13-5-507. Holiday Leave
R13-5-508. Industrial Leave
R13-5-509. Leave Amortization
R13-5-510. Leave Without Pay
R13-5-511. Military Leave of Absence
R13-5-512. Recognition Leave
R13-5-513. Sick Leave

ARTICLE 6. GRIEVANCES

Section

R13-5-601. Agency Grievance System
R13-5-602. Council Review

ARTICLE 7. DISCIPLINE AND APPEALS

Section

R13-5-701. Causes for Discipline
R13-5-702. Disciplinary Procedures
R13-5-703. Appeals to the Council
R13-5-704. Rehearing of Council Decisions
R13-5-705. Time Limits

ARTICLE 8. SEPARATION FROM EMPLOYMENT

Section

R13-5-801. Resignation or Retirement

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- R13-5-802. Reduction-in-Force
R13-5-803. Disability
R13-5-804. Public Safety Retirement System Eligibility

ARTICLE 1. GENERAL PROVISIONS

R13-5-101. Definitions

In this Chapter, unless otherwise specified, the following terms mean:

1. "Abandonment of position" means failure of an employee to report to work for a period of 5 consecutive working days without authorization from the employee's supervisor or manager and without good cause.
2. "Abilities" means general traits or capabilities an individual possesses when beginning the performance of a task.
3. "Agency" means any governmental organization subject to the rules of the Law Enforcement Merit System Council.
4. "Agency head" means the chief executive officer of any agency placed under the rules of the Law Enforcement Merit System Council
5. "Allocate or allocation" means the placement of a position to a classification based on the duties and responsibilities of the position.
6. "Annual leave" means the leave time accrued monthly by an employee based on the number of years of state service and may include holiday leave and recognition leave.
7. "Appeal" means an employee's request for Council review of a disciplinary action.
8. "Applicant" means a person who has applied for an opportunity to compete for a position.
9. "Appointment" means the placement of a candidate or employee into a classified position.
10. "Background investigation" means an inquiry to determine the character of a potential employee and may include verification and review of identity, education, employment history, personal references, credit rating, criminal history, driving record, and civil standing.
11. "Break-in-service" means a period of absence from agency service of more than 30 consecutive working days resulting from an employee's resignation, retirement, suspension, layoff, or leave of absence without pay.
12. "Business manager" means the individual responsible for administering the affairs of the Council.
13. "Candidate" means an applicant who qualifies for a place on an eligibility list.
14. "Certified list" means the names of qualified candidates on an eligibility list who are willing to accept an appointment.
15. "Civilian employee" means a person who is appointed to a classification that does not require peace officer status.
16. "Classification" means 1 or more positions requiring the same minimum qualifications, knowledge, skills, and abilities, that have the same title and pay range.
17. "Classification date" means the effective date of an employee's appointment to a classification.
18. "Classification specification" means the classification's title or rank, classification code, typical duties and responsibilities, essential functions, minimum qualifications, required knowledge, skills and abilities.
19. "Classified position" means a position that is allocated to a classification.
20. "Commissioned employee" means a person who is appointed to a classification that requires officer status as defined in A.R.S. § 41-1822(A)(3).
21. "Compensation" means the amount of money paid for each hour worked and paid leave taken and includes time off received for overtime and holidays worked or accrued.
22. "Compensatory time" means leave received for overtime worked.
23. "Competitor" means an applicant who has met the minimum qualifications for a classification and is competing in an employment or promotional examination.
24. "Contested case" means a case that fall within the definition in A.R.S. § 41-1001(4).
25. "Council" means the Arizona Law Enforcement Merit System Council.
26. "Covered position" means any position within an agency that is not appointed by the Governor or by the agency head with the concurrence of the Governor and is subject to the rules of the Council.
27. "Days" means full calendar days unless otherwise specified in the text of a rule.
28. "Demotion" means the disciplinary appointment of an employee to a classification with a lower pay range.
29. "Disabled person" means anyone who has a physical or mental impairment that substantially limits 1 or more main life activities, or who has a record of impairment, or is regarded as having such impairment.
30. "Dismissal" means an agency-initiated removal of an employee from state service.
31. "Duties" means an action or task required under the circumstances by an employee's position or classification.
32. "Eligibility list" means the names of candidates for a classification in descending order of their final scores in preparation for a selection process.
33. "Employee" means a person who is appointed to a position, subject to the terms and conditions of the appointment.
34. "Entrance rate" means the lowest rate of pay within the pay range of a classification.
35. "Examination" means an evaluation or test to determine if an applicant's qualifications comply with the specifications for a classification.

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36. “Examination plan” means a description of each phase of the examination, the weight applied to each phase of the examination, the criteria for moving from one phase of the examination to another, and whether the length the eligibility list will be limited to a specific number of names.
37. “Exempt employee” means an employee who is not subject to the overtime provisions of the Fair Labor Standards Act, Title 29 U.S.C. Chapter 8.
38. “External employment list” means an eligibility list of candidates seeking employment with an agency.
39. “Fair Labor Standards Act” (FLSA) means those federal statutes at Title 29 U.S.C. § 201-219; § 251-262, which is incorporated by reference and on file with the Council and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
40. “Family Medical Leave Act” (FMLA) leave means a medical leave of absence, with or without pay, taken by an eligible employee under a policy adopted by an agency head from options authorized in the federal regulations for the Family and Medical Leave Act, 29 U.S.C. § 2611, et. seq, which is incorporated by reference and on file with the Council and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
41. “For cause” means any improper behavior, unacceptable performance, or violation of Council rules that leads to disciplinary action or dismissal.
42. “Full-time employee” means an employee appointed to work 40 hours a week.
43. “Grievance” means a work-related complaint by an employee, regarding classification, compensation, performance evaluation, or violation of law or Council rules.
44. “Holiday leave” means the leave time accrued by working a state holiday or accrued when the holiday falls on a day the employee is not scheduled to work or is on paid sick leave. Holiday leave may be included in annual leave time.
45. “Human Resources” means an agency department responsible for personnel administration.
46. “Initial probation” means a probationary period required of a new employee to an agency.
47. “Intermittent Appointment” means the appointment of an employee to work on an irregular basis.
48. “Internal list” means an eligibility list of internal candidates seeking promotional positions or reassignments.
49. “Knowledge” means a body of information, usually of a factual or procedural nature, that makes for successful performance of a task.
50. “Limited duty” means a short-term assignment to a physically less demanding position while the employee recovers from a temporary medical condition or disability.
51. “Limited-term appointment” means an appointment to a position that is designated as temporary or is not funded by the agency’s legislative appropriation.
52. “Limited-term employee” means an employee in a limited-term appointment who has not achieved the status of a regular employee.
53. “Manifest error” means an erroneous act or failure to act in administering the provisions of Article 3 of this Chapter.
54. “Non-exempt employee” means an employee who is subject to the overtime provisions of the Fair Labor Standards Act, Title 29 U.S.C Chapter 8.
55. “Overtime” means time worked by a non-exempt employee in excess of 40 hours in a work week or in excess of 160 hours in a 28-day cycle. Overtime may include time worked when required to return to work from annual leave.
56. “Pay range” means the difference between the lowest and highest pay rates for a classification.
57. “Pay status” means an employee’s right to receive compensation for time worked or leave taken, except when absent on leave-without-pay or suspension without pay.
58. “Permanent employee” means an employee who has successfully completed an initial probation with an agency.
59. “Permanent status” means the employment rights achieved after satisfactorily completing the probationary period for the classification.
60. “Position” means a job or function, whether occupied or vacant, that is assigned a number, classification, funding source, pay range, and location code.
61. “Position audit” means an examination of the duties and responsibilities of a position to determine the appropriate classification.
62. “Probation” means a period of 12 months established for evaluating an employee’s performance to determine if the employee should be retained in a classification.
63. “Promotion” means the appointment of an employee to a position in another classification with a higher pay at the maximum level.
64. “Provisional appointment” means an employee who is appointed without being on an eligibility list and who serves until an eligibility list can be established for the position.
65. “Qualifications Appraisal Board” means a group of raters who evaluate a competitor’s qualifications based upon the competitor’s written or oral responses.
66. “Qualifying service” means part-time or full-time service as an employee of an agency, excluding any break-in-service.

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67. "Reallocation" means a change in the classification of a position, based upon an analysis of the duties and responsibilities of the position.
68. "Reappointment" means appointment to a classification previously held by a permanent status employee who was reassigned to a different classification during a reduction in force.
69. "Reassignment" means an appointment, at the employee's request, to a position in a different classification with the same or a lower pay range.
70. "Recall" means the appointment of a former employee who was separated by a reduction in force.
71. "Reclassification" means the change in classification of an employee due to the employee's movement to a position in a different classification or a reallocation of the employee's position to a different classification.
72. "Recognition leave" means leave time given an employee under a formal awards program as an incentive for continued superior performance. Recognition leave is added to annual leave.
73. "Reduction in force" means an action taken by an agency head to involuntary transfer, reassign, or lay-off an employee as a result of a:
 - a. Legislative or executive mandate;
 - b. Reduction of funds; or
 - c. Decrease in the number of authorized positions, service area, or program responsibilities.
74. "Regular employee" means an employee, except a limited term-employee, who achieves permanent status.
75. "Reinstatement" means an appointment of a former employee to the classification or a similar classification held when the employee separated from the agency.
76. "Rejection of probation" means an action taken by an agency head to reassign an employee on a promotional probation or to separate an employee on an initial probation for failure to achieve and sustain the required level of performance for the classification.
77. "Responsibilities" means the accountability for actions or tasks performed by an employee in a position or classification.
78. "Retirement" means a voluntary separation from the agency by an employee who is eligible to participate in a retirement plan.
79. "Separation" means the close of an employee's term of employment with an agency.
80. "Skills" means an individual's level of proficiency or competency in performing a specific task.
81. "Special duty assignment" means an employee's temporary assignment of more responsibilities or duties or an assignment to a position with special work or living requirements.
82. "State" means the state of Arizona.
83. "Standard performance" means a rating given to an employee who meets the expected level of performance needed to accomplish the objectives of a position.
84. "Standardized scoring" means a statistical method used to ensure that the various components of a multi-phased examination receive their proper weights.
85. "Suspension of pay" means the disciplinary action of withholding an employee's pay for a specified period.
86. "Telecommuting" means working from a site away from the office using a telephone or a telephone connection to operate a computer to carry on the function of the job.
87. "Transfer" means the movement of an employee from the employee's current position to another position in the same classification.
88. "Uncovered appointment" means an appointment to a job or function by the Governor or by an agency head with the concurrence of the Governor.
89. "Uncovered employee" means an employee who serves at the pleasure of the Governor.
90. "Veteran" means an individual who served in the armed forces of the U.S. and was discharged from military service under honorable conditions after more than 6 months of active duty and as defined in 37 U.S.C. § 101 and A.R.S. § 38-492.
91. "Work week" means a 40-hour time period an employee is assigned to work between Saturday and Friday, including actual time worked and any leave time taken.

R13-5-102. Law Enforcement Merit System Council

- A. Authority.** The statutory authority of the Law Enforcement Merit System Council is found in A.R.S. § 41-1830.11 through 41-1830.15.
- B. Decisions of the business manager are subject to review by the Council.**
- C. Election of Officers.** The Council shall elect a Chair and Vice-Chair from its members at a regular meeting in November or December of even-numbered years. The Chair and Vice-Chair shall hold office for a period of 2 years, or until their successors are elected.
- D. Meetings.** The Chair, or in the Chair's absence the Vice-Chair, shall call a meeting of the Council when a meeting is needed. The Council shall hold meetings at convenient locations whenever possible. Except for the Council's executive sessions, the Council's meetings shall remain open to the public and the Chair shall give interested parties an opportunity to be heard.

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- E.** Quorum. Two members are required for a quorum, and concurring members must equal a majority of those voting in order to take action.
- F.** Minutes. The Council shall keep minutes of its proceedings and official actions. The Council's records and minutes are open to public review during normal business hours.
- G.** Council rules. The Council's rules shall apply to all employees in any agency under the Council's rules. All employees shall receive a copy of the Council's rules.

R13-5-103. Personnel Administration

- A.** Separation of powers. The agency head shall staff and maintain a human resources function responsible for personnel administration consistent with these rules and under the jurisdiction of the Council as provided for in statute and this Chapter. The business manager shall provide oversight to Human Resources in administering this Chapter.
- B.** Personnel records. Human Resources shall maintain employment records on each agency employee, including the employee's:
 - 1. Employment application;
 - 2. Examination scores;
 - 3. Signed oath of office;
 - 4. Date of initial appointment;
 - 5. Other appointment orders;
 - 6. Performance reports;
 - 7. Transfers;
 - 8. Commendations;
 - 9. Leaves-of-absence without pay;
 - 10. Disciplinary actions;
 - 11. Separation from the agency;
 - 12. Reinstatement to the agency, and
 - 13. Any other appropriate employment records.
- C.** Confidentiality. Human Resources shall preserve the confidentiality of personnel records. Persons authorized to access personnel records are:
 - 1. The employee;
 - 2. A person authorized by the employee;
 - 3. A person with an official court order;
 - 4. A person authorized by the agency head;
 - 5. A person authorized by the chair of the Council; and
 - 6. A law enforcement agency with authorized access to such records under A.R.S. § 41-1828.01.

R13-5-104. General Information

- A.** Delegating authority. The agency head may delegate to other agency personnel the authority and duties imposed by this Chapter upon the agency head, unless otherwise prohibited by statute or rule.
- B.** Reports. The agency head shall provide information requested by the Council on matters relating to this Chapter. The agency shall present the information in the format requested by the Council.
- C.** Restricted information. The Council shall safeguard confidential information given to the Council by any employee or former employee. The Council shall not allow inspection of such information except under conditions prescribed by the Council.
- D.** Service of notice. The agency or the Council shall serve notice upon an employee personally or by the U.S. Postal Service. Postal service shall be made by certified mail, return receipt requested, to an employee's last known home or business address, and is complete upon mailing. Service as provided for in this Section is required for the following:
 - 1. Notice of an employee's rejection from probation;
 - 2. Notice of a charge in a disciplinary proceeding;
 - 3. Notice of an employee's suspension, layoff, or dismissal; and
 - 4. Other notices required by these rules.
- E.** Proof of service. The agency shall provide proof of service by affidavit.
- F.** Availability of funds. Reference in these rules to employee pay is contingent upon availability of funds, as determined by the agency head.
- G.** Compliance with federal rules and regulations. Any federal regulation or standard governing the granting of federal funds to an agency under the Law Enforcement Merit System Council takes precedence over any of these rules which conflict with the control and expenditure of federal funds.
- H.** Validity and separation. If any provision or application of the rules in this Chapter is held invalid by a court of competent jurisdiction, the remainder of the rules in this Chapter and application of the rules to other persons or circumstances are not affected by the court decision.

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- I.** Equal employment. The Council, the agency head, and agency employees shall not discriminate in any aspect of employment on the basis of race, color, religion, sex, national origin, age, disability, or pregnancy.
- J.** Accommodation. The Council and the agency head shall make reasonable accommodations to enable a person with a disability to use agency facilities, services, and programs. A person requesting accommodation shall notify the agency or the business manager as soon as reasonably possible in order to allow the agency time to arrange the accommodation.

ARTICLE 2. CLASSIFICATION AND COMPENSATION

R13-5-201. Classification

- A.** Classification Plan. The Council shall adopt and revise the classification of positions for use by an agency. Collectively, classifications adopted by the Council comprise the classification plan of the Council. Each classification in the classification plan includes:
 - 1. A descriptive title;
 - 2. A description of the scope of duties, typical responsibilities, and essential functions;
 - 3. The minimum qualifications required of an applicant; and
 - 4. A determination of non-exempt or exempt status under the Fair Labor Standards Act.
- B.** Classification Specifications. The business manager shall document the date of adoption and the latest revision of each classification specification, and shall maintain the master set of all approved classification specifications. Human Resources shall also maintain a set of all approved classification specifications. Copies of a classification specification are open for inspection by an employee and the public during normal business hours.
- C.** Allocating positions. The Council shall allocate a position to the appropriate classification in the Classification Plan. The Council shall allocate a position to the same classification when:
 - 1. The duties and responsibilities are substantially similar;
 - 2. The same education, experience, knowledge, skills, and abilities required are substantially similar;
 - 3. The examinations used in choosing qualified candidates are substantially similar; and
 - 4. The pay range may be applied equitably to all positions in the classification.
- D.** Compensation Maintenance Review Plan: The Council shall adopt and revise guidelines for a classification and compensation maintenance review plan. An employee shall be placed in a classification in accordance with this plan.
- E.** Assignment. Except in an emergency, or as otherwise provided by this Chapter, an agency shall not assign an employee to perform the duties of any classification other than the classification to which the employee's position is allocated.
- F.** Modification. The Council may establish a new classification and revise or abolish an existing classification. The Council shall decide when a position in an affected classification needs to be reallocated, taking into account the classification duties, responsibilities, and related criteria. The Council shall also determine the probationary or permanent status of an employee affected by reallocation.
- G.** Reviewing allocations. An employee affected by reallocation of the employee's position shall have the opportunity to be heard by the Council under R13-5-602.
- H.** Changes in positions. The business manager shall reallocate an existing position when a material and permanent change occurs in the duties and responsibilities of the position.
 - 1. If an employee is in a position that is reallocated, an agency shall reclassify the employee in that position if the employee:
 - a. Has been in the position at least 6 months;
 - b. Has occupied the position during the change in duties; and
 - c. Meets the minimum qualifications of the new classification.
 - 2. A position shall not be reallocated while undergoing a classification and compensation review, except that the Council may reallocate a position that is undergoing a classification and compensation review when an agency head can show that the reallocation is necessary for the continued operation of the agency.
- I.** New positions. An agency head shall establish positions in the agency as authorized by law, subject to budgetary authorization and availability of funds. An agency head shall notify the Council when a new position is established. The Council shall allocate a new position to the appropriate classification.
- J.** Classification titles. An agency shall use a classification title approved by the Council in all communications regarding personnel, budget, and financial records.

R13-5-202. Compensation

- A.** Compensation plan. The Council shall adopt compensation levels for all classifications. Collectively, compensation levels adopted by the Council comprise the compensation plan of the Council. An agency shall periodically revise the compensation plan for a covered position, based on the principle that like salaries are paid for comparable duties and responsibilities, and shall submit the agency's recommendations to the Council for approval.
- B.** Hearings. If an agency recommends a change in a pay range, the Council shall grant any adversely affected employee an opportunity to be heard.

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- C.** Pay Levels. The Council shall specify all pay levels. The Council may also establish more than 1 pay range, hourly rate, or method of compensation for classifications and positions with unusual hours, conditions of work, or when necessary to compete with other employers.
- D.** Lack of Funds. If an agency lacks sufficient funds to pay an employee's salary, the agency shall consider an alternative method of reducing costs, including those described in R13-5-802(B). If an alternative method is not adequate or available, the agency shall assign an employee to a leave of absence without pay under the layoff procedure in R13-5-802. The agency shall recall the laid off employee when sufficient funds become available.
- E.** Entrance rate. The minimum pay rate for each classification is the entry rate, unless otherwise provided in these rules. The agency shall maintain a record of each employee's employment date and entrance into a classification.
- F.** Special pay adjustments. When making an appointment, promotion, reinstatement, recall, transfer, reclassification or reassignment, an agency head may authorize pay anywhere within the pay range to meet recruiting and retention needs, and to give credit for prior agency service.
- G.** Rate above maximum. When a position is reallocated resulting in the reclassification of an employee to a lower classification or the pay range of a classification is reduced, the agency head may authorize a pay rate for the employee above the maximum for the classification. While an employee's pay remains above the maximum rate for the employee's classification, the employee shall not receive any pay increases except those required by law.
- H.** Rate on movement to a classification with a lower pay range. An employee who accepts reassignment to a classification with a lower pay range may receive a rate above the minimum, if authorized by the agency head. The agency shall then establish a new classification date for the employee.
- I.** Rate on movement to a classification with the same range. When an employee moves to another classification with the same range, the employee shall retain the employee's current rate of pay.
- J.** Rate on movement to a classification with a higher pay range. When an employee moves to another classification with a higher pay range, the employee shall receive pay at the entry level of the new classification. If the employee's current pay is greater than the entry level of the new classification, the employee shall receive no less than a \$500 annual increase. In no case shall an employee's salary exceed the maximum for the new classification.
- K.** Rate upon reinstatement. Upon reinstatement, a former employee shall receive the entrance rate for the employee's classification, unless the agency head authorizes a higher rate or as directed by the Council following a disciplinary hearing.
- L.** Rate upon recall. A former employee who is recalled after a layoff shall receive the same pay rate as that held before the layoff. If the Council approved a general pay adjustment or classification adjustment while the employee was on leave of absence without pay, the employee shall receive the adjustment.
- M.** Automatic pay adjustment. A classification pay range adjustment applies equally to all employees within the classification and does not alter an employee's classification date for a pay adjustment.

R13-5-203. Pay Administration

- A.** Base pay adjustment. An agency head may modify base pay by adding cost-of-living and other adjustment appropriated by the State Legislature. An agency head may also request that the Council revise the compensation plan to include other changes to base pay, as needed. After base pay adjustments are completed, an agency head may add special duty pay before computing an employee's pay rate.
- B.** Appropriated pay adjustment. Upon approval by the Council the agency head may apply some or all the appropriated funds to the compensation plan, if the appropriation bill does not include specific allocation instructions for an employee pay raise, or if the instructions are not applicable to the agency.
- C.** Special duty assignment. An agency head may supplement the base pay of an employee on a special duty assignment. Time spent on a special duty assignment counts toward an employee's length of service. An employee may receive special duty pay only for the period when the employee performs the required duties of the special duty assignment.
- D.** Return from special duty assignment or uncovered appointment. When an employee returns to a regular appointment from a special duty assignment or an uncovered appointment, the agency shall return the employee's pay to the employee's base pay earned before being assigned to a special duty assignment or uncovered appointment. If general pay adjustments or classification adjustments are approved while an employee is on a special duty assignment or serving in an uncovered appointment, the employee shall receive the adjustments.
- E.** Overtime pay. The agency head shall adopt an overtime policy and procedure consistent with federal regulations under the Fair Labor Standards Act, Arizona Revised Statutes, and this Chapter. Compensatory leave is accrued and used as provided by R13-5-505.

R13-5-204. Work Hours and Work Options

Work hours and work breaks. An agency head may establish different working hours for certain work groups and shifts in order to meet the needs of the agency. In doing this, the agency head should consider such factors as clean air directives, telecommuting, and flexible work hours. An agency head shall establish a policy for "on-duty" and "off-duty" time consistent with federal regulations under the Fair Labor Standards Act, Arizona Revised Statutes, and this Chapter and provide procedures for recording time worked and leave taken by an employee.

ARTICLE 3. EMPLOYMENT

R13-5-301. Recruitment

- A.** Recruiting an external applicant. When authorized by an agency head, Human Resources shall seek qualified applicants through open recruiting and competitive employment opportunities. Human Resources shall publish and distribute job announcements that include:
1. The classification title and pay;
 2. The minimum qualifications;
 3. The location of the assignment, if known;
 4. Special requirements, if any;
 5. Location of forms; and
 6. The application deadline.
- B.** Applications. Human Resources shall establish procedures for distributing and receiving an application. Human Resources shall screen all applications and may reject any that are incomplete, illegible, or received after the deadline.
- C.** Disqualifying an applicant or candidate. An agency head or the agency's Human Resources unit may disqualify any applicant or candidate based upon information in an application, statements made by the applicant's references, and a background investigation by the agency. The agency shall also disqualify any applicant who:
1. Lacks the required qualifications for the classification;
 2. Was convicted of a disqualifying offense;
 3. Was dismissed by a previous employer for a reason that is cause for dismissal from the agency;
 4. Practiced deception or failed to give complete and accurate information; or
 5. Failed to meet selection guidelines as established by the Council.
- D.** Reapplying. A candidate who fails any portion of the background investigation, with the exception of medical only, shall be precluded from reapplying for a period of 2 years from the date of disqualification.
- E.** Notifying an applicant. After completing a qualification review, Human Resources shall notify an applicant of the agency's acceptance or rejection of the employee's application.
- F.** Retaining an application. Human Resources shall retain all applications under a records retention and disposition schedule approved by the Department of Library, Archives, and Public Records.

R13-5-302. Examinations

- A.** Examination plan. Human Resources shall develop an examination plan for each selection process. The business manager shall review and approve each examination plan. An applicant for the examination shall be notified of the examination plan. Once an examination begins, changes will not be made to the plan. If an examination plan needs to be altered, Human Resources shall terminate the current examination and initiate a new examination.
- B.** Examination guidelines. Human Resources shall obtain or develop a valid examination for each classification, and establish a weight and minimum qualifying requirement for each phase of the exam. The business manager shall review and approve each examination before the examination is administered. A competitor shall achieve the minimum requirements on each phase of an examination before progressing to the next phase. A competitor shall achieve a passing score on each phase before qualifying for a classification.
- C.** Notifying an applicant. Human Resources shall notify a qualified applicant of the following information:
1. The date, time, and location of each examination;
 2. The number of phases included in the examination;
 3. Other pre-employment requirements; and
 4. How to request special accommodations for persons with a disability.
- D.** Type and content of examination. Human Resources shall ensure that each examination is valid, non-discriminatory, and fairly and accurately measures an applicant's ability to perform the functions and duties listed in the classification specifications.
- E.** Conducting an examination.
1. Human Resources, or a person designated by Human Resources, shall administer the examination.
 2. The business manager shall oversee all elements of, but not actively participate in, the examination process to ensure that each component is administered, scored, evaluated, and interpreted fairly and accurately.
 3. Human Resources shall permanently disqualify an applicant from taking any employment or promotional examination if it has been established that the applicant is guilty of copying, collusion, unauthorized access, or other acts of dishonesty relating to an official examination.
- F.** Scoring an examination. Human Resources shall oversee the scoring of the examination.
1. Human Resources may use a rater from within or outside of an agency to score an examination. Human Resources shall select an examination rater who is qualified to appraise the education, experience, and personal qualifications of a competitor.

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2. Human Resources shall provide a rater with scoring guidelines and exam answer keys to ensure consistency of scoring, evaluation, and interpretation of test results. All phases of an examination shall have predetermined and clearly defined scoring criteria.
 3. If a member of a qualifications appraisal board gives a competitor an average rating below the passing level, but a majority of the members give the competitor a passing score, the competitor shall receive a minimum rating of "pass". If a majority of the qualifications appraisal board gives the competitor a score below the passing level, the competitor shall be disqualified, even if the competitor's average score is above the passing level.
 4. Human Resources shall apply standardized scoring to a multi-phased examination when the number of competitors is 5 or more.
- G.** Validating an examination result. If Human Resources finds that an examination is incorrectly scored or that a portion of an examination is defective, Human Resources shall:
1. Correct all scoring errors, or
 2. Eliminate the defective portion of an examination and revise the score of each competitor.
- H.** Reviewing exam results. Within 10 days after receiving a notice of examination results, an applicant may request that the business manager review all examination questions, answers, scoring methods, procedures, and decisions.
1. If the business manager's review discloses an error, the business manager shall return the examination to Human Resources for correction.
 2. If an error affects the scores of other competitors, Human Resources shall revise all incorrect scores.
- I.** Retaining test scores. Human Resources shall retain all examination materials and test scores under a records retention and disposition schedule approved by the Department of Library, Archives, and Public Records.
- J.** Notifying a competitor. Upon completion of an examination process, Human Resources shall notify a competitor of the competitor's final score.

R13-5-303. Applicant Preference Points

If an applicant receives a passing score on an examination and has qualified for placement on an employment list, Human Resources shall add the preference points authorized by A.R.S. § 38-492 to the applicant's final score, provided the applicant submits official documentation of eligibility for preference points. Preference points shall not apply to a promotional examination.

R13-5-304. Employment

- A.** Establishing an employment eligibility list. Human Resources shall develop employment eligibility lists for various classifications, as needed. For each list, Human Resources shall arrange the names of competitors in descending order of the competitor's final examination scores.
- B.** Establishing a list in case of ties. If 2 or more competitors receive the same rating in an examination, the competitor's names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest weight. If a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.
- C.** Reviewing the employment eligibility list. Human Resources shall submit an employment eligibility list to the business manager for approval and certification.
- D.** Notification to candidate. When an employment eligibility list is certified by the business manager, Human Resources shall notify a candidate of the candidate's relative ranking on the list.
- E.** Duration of an eligibility list. The business manager shall establish each new or merged list for 1 year from its effective date. Before a list expires, the Council may extend the duration of or cancel a list. The Council may extend a list for no more than 1 6-month period. The maximum duration of a list shall be 18 months except in the event there is a court order placed on the list preventing promotions from the list by the agency.
1. Restoring a list. If a need arises and a current list is not available, the Council may restore a list that expired or canceled within the past 6 months.
 2. Merging a list. If 3 or fewer candidates remain on an existing list, Human Resources may establish a new list and merge the existing list with the new list. When the merged list is established, Human Resources shall rearrange the names in descending order of the candidates' final scores and notify each candidate of the candidate's relative ranking. Human Resources shall remove a candidate's name from the new list on the expiration date of the candidate's original list.
 3. Retesting a merged candidate. If another examination for the same classification is held before the prior list expires, a merged candidate from the prior list may take the examination. If the candidate passes the test, Human Resources shall place the candidate on the list according to the new score. The candidate shall remain on the list for its duration.
- F.** Removing a candidate. The business manager shall remove a candidate from an eligibility list for any of the following reasons:
1. Human Resources is unable to contact the candidate by phone or mail;
 2. The Council abolishes the classification for which the list was developed; or
 3. The candidate withdraws from the selection process.

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G. Correcting a manifest error. The business manager shall correct a manifest error that occurs in developing, using, or maintaining an eligibility list. The business manager shall not change the effective date of a list in order to correct an error discovered after posting the eligibility list.

R13-5-305. Promotion

- A.** Announcing a promotional examination. Human Resources shall publish an agency-wide announcement when initiating development of an internal eligibility list. An announcement shall include the information in R13-5-301(A).
- B.** Applying for promotion. An employee may compete for a place on an internal eligibility list by submitting an internal application form to Human Resources by the application filing deadline.
1. An employee is eligible to take a promotional examination if the employee:
 - a. Satisfactorily completes initial probation by the application filing deadline;
 - b. Meets or exceeds the minimum qualifications for the classification; and
 - c. Receives a standard or above standard performance evaluation for the latest rating period.
 2. An employee who participates in developing an examination for an internal classification is not eligible to take the examination for that classification.
- C.** Processing an application. Human Resources shall process an application consistent with the procedures in R13-5-301(B), (C), and (F).
- D.** Business manager review. Within 10 days after a notice of rejection of an application has been mailed to the employee, an employee may request that the business manager review a rejected application. The business manager may review and overturn or concur with the decision of Human Resources. An employee may also request that the Council review the business manager's decision.
- E.** Promotional examination. Human Resources shall conduct a promotional examination consistent with R13-5-302. An employee eligible to take a promotional examination shall notify the employee's supervisor of the time and date of the examination as soon as it is known. A supervisor shall authorize an employee to participate in a promotional examination while on duty.
- F.** Inspecting an examination. Within 10 days after taking a written promotional examination, a competitor may request permission from the business manager to inspect a copy of the exam for the purpose of identifying an item the competitor believes is incorrect.
1. The business manager shall arrange an inspection of an exam during business hours, in an agency office, and in the presence of the business manager or an employee authorized by the business manager.
 2. The competitor shall advise the business manager of the questions or answers challenged.
 3. The competitor may make notes concerning items the competitor plans to challenge but shall not otherwise copy a question in the examination.
 4. The competitor may file a written notice with the business manager questioning an item in the examination and explaining the basis for any challenge. The business manager shall process the challenge consistent with the procedure in R13-5-302
- G.** Scoring and validating an examination. Human Resources shall score and validate an examination under R13-5-302(F) and (G).
- H.** Inspection of examination results. Within 10 days after notice of the results of an examination, a competitor may request to review the competitor's examination with the business manager, or an employee authorized by the business manager.
1. The business manager or the authorized employee shall oversee the competitor's examination inspection.
 2. An employee shall not copy questions or answers, nor make any alterations to the examination papers.
 3. Only the Council, business manager, competitor, competitor's attorney, and the agency head may inspect a competitor's examination.
 4. Within 10 days of a review, a competitor may file a written notice with the business manager questioning examination results on the basis of irregularity, bias, fraud, or scoring error, and explaining the basis for any challenge. The business manager shall correct any error in the scoring of the examination. An employee may request that the Council review the business manager's decision.
- I.** Military leave. Human Resources shall allow an employee returning from military leave to take any examination that the employee could have taken if military service had not intervened. If the employee passes the examination, the business manager shall add the employee's name to the appropriate internal eligibility list.
- J.** Establishing an internal list. Human Resources shall prepare an internal list for a promotional classification with competitor's names arranged in descending order of the competitor's final score.
- K.** Establishing a list in case of a tie. If 2 or more competitors receive the same rating in an examination, the competitor's names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest weight. If a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.
- L.** Approval of list. Human Resources shall submit the internal list to the business manager for approval and certification.
- M.** Notifying a candidate When the list is certified by the business manager, Human Resources shall notify a candidate of the exam results and the candidate's relative ranking on the list.
- N.** Duration of a list. A list shall remain in force consistent with R13-5-304(E).

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- Q.** Revising a classification. If the Council orders that a classification be revised, Human Resources shall establish a new list for the revised classification and cancel any existing list.
- P.** Removing a candidate from an internal list. The business manager shall remove a candidate from an internal list if:
1. The candidate fails to maintain required qualifications for the classification.
 2. The candidate resigns from agency service, or
 3. The internal list expires.
- Q.** Promotion for a commissioned classification. An agency may establish a job-interest card system for a promotion in a commissioned classification. If a candidate submits a job-interest card indicating interest in only a specified position, that candidate shall not be considered for any other position except as outlined in this subsection.
1. An agency head shall offer a promotional position to a candidate ranking highest on the promotional eligibility list who filed a job-interest card for that position.
 2. If there are no job-interest cards for a specific position, an agency head shall offer a promotional position to the candidate ranking highest on the promotional eligibility list. If the employee highest on the promotional list declines the promotion, the agency head shall offer the position to the employee next highest on the list until all candidates on the promotion list are offered the position.
 3. For a location that has 2 or fewer positions, an agency head may appoint any promotional candidate residing in that location.
 4. If a candidate declines an offer of promotion, the business manager shall move that candidate's name to the bottom of the promotional eligibility list.
 5. If all candidates on a promotional eligibility list decline a promotion, an agency head shall make a second offer to all candidates on the list.
 6. If all candidates on the list decline the second offer, the business manager shall cancel the list. Human Resources shall then initiate a process to create a new list for the classification.
- R.** Promotion for a civilian classification. Civilian promotions are conducted under R13-5-308 and R13-5-309.

R13-5-306. Reassignment

- A.** Reassignment application. An employee may request reassignment to a different classification with the same or a lower pay range by submitting an application to Human Resources documenting the employee's qualifications. An application for reassignment can be obtained from Human Resources.
- B.** Qualification screening. Human Resources shall determine whether the employee meets the minimum qualifications of the classification. Unless the employee has previously held permanent status in a classification, Human Resources shall require the employee to pass an examination for the requested classification. Any employee required to test may request an examination review under R13-5-305(D), (F), and (H).
- C.** Eligibility list. If the employee qualifies, Human Resources shall place the candidate's name on an appropriate internal eligibility list under R13-5-305 (J) and (K).

R13-5-307. Reinstatement

- A.** Reinstatement list. A permanent status employee who separates from an agency may apply for reinstatement within 1 year. Upon approval of the agency head, Human Resources shall place the former employee's name on a reinstatement list for the last classification held by the employee and any previous or closely related classifications for which the employee is qualified.
- B.** Duration of the list. A reinstatement list shall remain in force for a maximum of 1 year. At the agency head's request, the Council may extend the duration of the list for 6 months periods at a time.
- C.** Background investigation All candidates for reinstatement are required to pass a background investigation.

R13-5-308. Hiring Preference

- A.** Order of lists. When an agency head authorizes filling a vacant position, Human Resources shall notify the manager who is filling the vacancy of any employees requesting a transfer to the vacant position. After considering a transfer request, or if there are none, the manager may request a list of candidates for the position from available eligibility lists in the following order of preference:
1. Reappointment list,
 2. Reassignment list,
 3. Recall list,
 4. Internal list,
 5. Reinstatement list, and
 6. Employment list.
- B.** Referring candidates. Human Resources shall contact eligible candidates in the above order of preference to be interviewed. Candidates shall advise Human Resources if they wish to be interviewed.
1. For 1 vacant position, Human Resources shall refer the 3 interested candidates standing highest on each of the lists. Human Resources may refer less than 3 names when there are fewer than 3 candidates on the lists.
 2. For multiple vacancies, Human Resources shall refer 1 more candidate for each vacant position from the lists.

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3. If a list is not available, the business manager may refer candidates from lists of the same or higher level as the position being filled.
- C. Canceling a list. If all candidates on the promotional eligibility list advise Human Resources that they are not interested in a position, Human Resources shall make a second offer to all candidates on the list. If all candidates on the list decline the second offer, the business manager shall cancel the list. Human Resources shall then initiate a process to create a new list for the classification.

R13-5-309. Selection

- A. Selecting a candidate. The manager shall follow the interview and selection policy provided by Human Resources.
- B. Interviewing. The hiring manager shall interview candidates requesting a transfer, and may interview up to 3 candidates from each certified list. The hiring manager may select a transferee or the top candidate from a certified list without conducting an interview.
- C. Additional names. If the hiring manager rejects all initial candidates, the hiring manager shall document job-related reasons for their rejection and submit the interview forms to Human Resources. If Human Resources agrees with the hiring manager's reason for rejection, Human Resources shall refer up to 3 more names from the lists.
- D. Documenting the selection. Upon making a selection, the hiring manager shall complete the documentation and return all interview and selection materials to Human Resources.
- E. Record retention. Human Resources shall retain interview and selection records under a records retention and disposition schedule approved by the Department of Library, Archives, and Public Records.

R13-5-310. Pre-employment Processing

- A. Pre-employment screening. Before appointment to a position, a candidate shall successfully pass a background investigation and any other examination considered appropriate by the agency head.
- B. Withdrawal from selection process. If a candidate elects to withdraw from the selection process, Human Resources shall document the candidate's withdrawal.
- C. Failing to successfully complete an examination. If a candidate fails to successfully complete any of the requirements in subsection (A), Human Resources shall document the failure and disqualify the candidate.
- D. Final processing. When a candidate passes all the pre-employment requirements, Human Resources shall prepare and submit the appropriate forms to the agency head for approval.
- E. Declining position offers. Human Resources may remove from a certified list any candidate who declines an appointment offer.
- F. Requesting accommodation. If a selected candidate requests a special accommodation under state or federal law, Human Resources shall confer with appropriate personnel to determine if a reasonable accommodation is possible.

R13-5-311. Appointments

- A. Required oath of office. An appointee shall read the oath described in A.R.S. § 38-231(G) and agree in writing to uphold the office before the agency head, or a designee authorized to administer an oath.
- B. Refusal to take oath. Any person who refuses or fails to take the oath required by this Section within the time provided shall forfeit the right to the position.
- C. Filing of oath. When the oath is signed by an appointee, Human Resources shall file the oath in the employee's personnel file.

R13-5-312. Limited-Term Appointments

- A. Limited-term position. A limited-term position is either temporary or funded from a source outside an agency's regular legislative appropriation. An appointee to a limited-term position shall, after successfully completing initial probation, have the rights of a permanent employee, except for the opportunity to compete for retention against regular employees in a case of layoff due to a reduction-in-force.
- B. Certifying a candidate. An eligible candidate is certified based upon the candidate's position on the eligibility list and the candidate's willingness to accept a limited-term appointment.
- C. Separation. The agency may separate a limited-term employee at any time before expiration of the appointment by notifying the employee in writing. If a provisional or an intermittent employee remains employed in the same classification, the agency shall not separate a limited-term employee except for reasons listed in A.R.S. § 41-1830.15.
- D. Effect of transfer or promotion.
 1. A limited-term employee who transfers or promotes from a limited-term position to a non-limited-term position shall obtain the rights of a permanent employee. Time spent in a limited term position is counted as service time in cases of layoff due to a reduction-in-force.
 2. An employee who transfers or promotes from a non-limited-term position to a limited-term position shall retain the rights of a permanent employee. Time spent in a limited-term position is counted as service time in case of layoff due to a reduction-in-force.

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R13-5-313. Provisional appointments

- A.** Provisional appointment. When no employment or internal list is available, an agency head may make a provisional appointment. A provisional appointment continues only until an eligibility list is certified by the business manager.
- B.** Length of appointment. Within 12 months of a provisional appointment, Human Resources shall conduct an appropriate examination and establish an eligibility list for a classification with a provisional appointee.
- C.** Separation. Upon separation from a provisional appointment, an employee shall have no right of appeal to the Council for review of the agency head's action.

R13-5-314. Intermittent Appointment

Intermittent position. When an agency head needs a person to work on an intermittent or irregular basis, the agency head shall request a list of candidates for intermittent appointment. An applicant who meets the minimum qualifications and indicates willingness to accept the terms of intermittent employment shall be placed on an eligibility list for selection.

R13-5-315. Employee Conduct

- A.** Standards of conduct. An employee shall perform the duties and responsibilities of the employee's assigned classification and position. An employee shall comply with applicable laws, rules, and agency policy. An employee shall demonstrate respect, fairness, diligence, impartiality, courtesy, efficiency, and integrity in all contacts with the public and other employees.
- B.** Fitness for duty. If a supervisor has reasonable doubt that an employee is psychologically or physically unable to perform the essential duties of the position, the supervisor shall request the agency head's permission to have the employee evaluated by a psychologist or physician determined by the agency. Upon approval, Human Resources shall schedule an appointment, and the employee shall submit to an evaluation. The examiner shall provide the agency head with conclusions, recommendations, and other information necessary to decide if the employee is fit for duty.
- C.** Political activity. An agency employee shall not violate the provisions of A.R.S. § 41-772 concerning permissible and improper political activity.
- D.** Conflict of interest. An agency employee shall not violate the conflict of interest provisions of A.R.S. § 38-501, 38-502, 38-503, and 38-504 while engaged in outside activities or employment.
- E.** Nepotism. An employee or candidate for employment shall not be appointed to any position in violation of A.R.S. § 38-481, nor shall an employee misuse or abuse appointment privileges.
- F.** Attending council meetings. With supervisory approval, an employee may attend a meeting of the Council during working hours if the employee is an interested party in a matter scheduled for consideration. The employee may have another representative assist in the presentation before the Council.
- G.** Employee organization attendance at Council meetings. The agency head may authorize a recognized employee organization to send at least 1 representative to each Council meeting during working hours.

R13-5-316. Probation

- A.** Initial probation. An employee shall serve an initial probationary period of 12 months.
- B.** Promotional probation. An employee shall serve a promotional probationary period of 12 months.
- C.** Effect of military service on probation. A probationer may be called into active military service. If the probationer returns to the agency and satisfactorily completes probation, the employee's personnel record shall show that the employee achieved permanent status on the date the employee would have completed probation if military service had not intervened.
- D.** Extension of probation. An agency head may extend an employee's probationary period by adding a period equal to the time the employee was absent from work or when the employee's performance was below standard. If the probationary period is extended, the manager shall notify the employee of the extension before the end of the probationary period.
- E.** Satisfying probation. A probationer who achieves a standard or higher performance evaluation by the end of the probationary period shall obtain permanent status in the appointed classification.
- F.** Permanent status by default. An employee shall achieve permanent status by default if the employee's manager either fails to extend or reject the probationary period prior to the last day of the employee's probation.
- G.** Rejection of a probationer. An agency head may, at any time during the probationary period, reject a probationer without cause and without the right to Council review.
- H.** Effect of rejection of initial probationer. If an employee is rejected during initial probation the employee shall be separated from the agency.
- I.** Effect of rejection of promotional probationer. If a regular employee is rejected during promotional probation or probation for a different but equal classification, the agency head shall reappoint the employee to a vacant position in the employee's former classification or an equal position for which the employee is qualified. If there is no vacancy in an appropriate classification, the agency head may temporarily assign the employee until a vacancy is available.
- J.** Notice of rejection of probation. An agency shall notify a rejected probationer as follows:
 - 1.** The employee's manager shall prepare a notice, stating the effective date of the rejection. The manager shall ensure that this date is no later than the last day of the probationary period.
 - 2.** The employee's manager shall obtain the agency head's signature on the notice of rejection.

3. The employee's manager shall serve the probationer with the notice, either in person or by mail, on or before the effective date of rejection.
4. The employee's manager shall submit a copy of the rejection notice to the business manager within 20 days after the notice is served.
- K.** Review of rejection of promotional probation. Within 20 days after the employee's manager delivers or mails the notice, a rejected promotional probationer may file a written request with the Council for review of the rejection. The Council may review the procedures utilized by the agency to assure conformity with Council rules and statutes.
- L.** Withdrawal of rejection. At any time before the Council acts on a probationer's rejection, the agency head may withdraw the notice of rejection and restore the employee to the previous position or another position for which the employee is qualified.
- M.** Probation for a returning employee. If a separated employee is reinstated to a classification previously held with permanent status, the agency head may require the employee to serve an initial probationary period. When a separated employee is recalled or reinstated into a classification different from any classification previously held with permanent status, the employee shall serve a probationary period.
- N.** Probation not required. If an employee is recalled or reappointed within 2 years after undergoing a reduction-in-force, the employee shall not be required to serve a probationary period if reappointed to the same classification previously held with permanent status. An employee shall not be required to serve another probationary period if the employee is:
 1. Reinstated by the Council, or
 2. Reassigned or demoted by the agency head into a classification previously held by the employee.

R13-5-317. Performance Evaluations

- A.** Establishing a performance evaluation program. The Council shall adopt and an agency shall administer a performance evaluation program. The program shall include a rating system that informs the agency head and the employee of the employee's relative level of performance. The evaluation program shall include training on how to achieve and maintain standard performance and how to improve performance.
- B.** Performance evaluation manual. The Council shall provide a manual that provides clear and concise guidelines for objectively measuring and reporting employee performance. Only the Council may authorize a revision of the manual. Each employee shall receive a copy of the manual, which includes evaluation procedures and forms.
- C.** Frequency of evaluation. A supervisor shall evaluate and give each permanent-status employee a written performance evaluation at least 1 time in each 12 month period. A supervisor shall evaluate a probationary employee at least 1 time in each 6 month period.
- D.** Effect of failure to evaluate. If an employee's supervisor fails to evaluate the employee, or fails to evaluate the employee by the end of the rating period, the employee shall be given no less than a standard evaluation for that period.
- E.** Grieving an evaluation. An employee who receives a less than standard rating may file a grievance with the agency head. If the grievance is denied by the agency head, the employee may grieve to the Council any overall rating that:
 1. Is less than standard.
 2. Would cause a reduction in pay, or
 3. Would result in withholding or postponing a salary adjustment.

ARTICLE 4. ASSIGNMENTS

R13-5-401. Special Duty Assignment

- A.** General. An agency head may assign an employee to a special duty assignment in the employee's current classification or a higher classification. A special duty assignment is temporary and is not a promotion.
- B.** Pay and eligibility. An agency head may add special-duty pay to the employee's base pay. If the special duty assignment is for a different or higher classification, the agency head may authorize a pay rate within that classification. A special duty assignment is subject to the following conditions:
 1. The assigned employee meets the minimum requirements of the special duty classification; and
 2. The assigned employee performs the duties of the assigned classification.
- C.** Review by Council. Special duty assignments shall be biennially reviewed by the Council no later than September in even numbered years.
- D.** Return to regular duty. Upon completion of a special duty assignment, the agency head shall discontinue special duty pay and reassign the employee to the previously held position or to a similar position in the same classification at the employee's normal pay level.

R13-5-402. Uncovered Appointment

- A.** Authorization. An agency head may authorize an employee to temporarily accept an uncovered appointment within:
 1. The agency,
 2. Another state agency,
 3. The Governor's office,
 4. The Legislature, or

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5. Another government agency.
- B.** Employee rights. A classified employee in an uncovered appointment shall retain all rights of a covered employee except for the right to appeal removal from the uncovered appointment.
- C.** Returning to regular duty. Upon completion of an uncovered appointment, the agency head shall reassign the employee to the previously held position or to a similar position in the same classification.
- D.** Leave policy for an uncovered employee accepting a covered position: An uncovered employee of a state agency or any state budget unit, may transfer accrued annual and sick leave when accepting a covered position with an agency under the jurisdiction of the Council.
 1. Annual leave.
 - a. Up to 360 hours of annual leave may be transferred at the gaining agency's discretion.
 - b. Annual leave in excess of 360 hours shall be paid off by the losing agency.
 - c. An employee shall be paid for any annual leave that is not accepted by the gaining agency.
 2. Sick leave. All accrued sick leave hours shall be accepted by and transferred to the agency.

R13-5-403. Transfer of an External Function

- A.** Transferring a function. If a state program is transferred into an agency, the losing agency shall pay a transferring employee for all accrued compensatory leave as of the date of the transfer. Effective on the date of transfer, the losing agency shall also transfer sufficient funds to the receiving agency to pay for accrued annual leave, recognition leave, and sick leave of a transferring employee.
- B.** Council action. The business manager shall determine the classification of a transferring employee and recommend that the Council adopt other classifications that need to be added or revised.
- C.** Transferee status. A transferee shall retain accrued annual leave, recognition leave, sick leave, and length of state service. A transferee shall also retain the transferee's current rate of pay until the Council reviews and approves a new or existing compensation schedule.
- D.** Appointing a transferee. An agency head shall determine the organizational placement of a transferred program and appoint each transferee to an appropriate position.
- E.** Probation. A transferee on probation at the time of the transfer shall complete the transferee's probationary period under R13-5-316 before obtaining permanent status.

ARTICLE 5. EMPLOYEE LEAVE

R13-5-501. Employee Leave Guidelines

- A.** Full-time employee. A full-time employee may accrue the following types of paid leave:
 1. Annual leave;
 2. Holiday leave;
 3. Recognition leave; and
 4. Sick leave.
- B.** Leave request. An employee shall not use leave before it is accrued. An employee shall obtain supervisory approval before taking leave. An agency may establish a policy allowing delayed notice to the employee's supervisor in emergency situations.
- C.** Time accounting record. An agency shall maintain a record of time worked, leave earned, leave taken, and accrued leave balances. The agency shall periodically provide a leave balance statement to an eligible employee. A non-exempt employee shall report all time worked and all leave taken on a weekly basis. An exempt employee shall report leave taken as directed by agency policy.

R13-5-502. Administrative Leave

An agency head may authorize administrative leave with pay:

1. During a disaster, state of emergency, or a day of mourning declared by the Governor;
2. When an employee is instructed to not report for duty, or to return home because of a hazardous condition; or
3. To temporarily relieve an employee from duty for the good of the agency or the employee.

R13-5-503. Annual Leave

- A.** Computing length of service. For determining an annual leave accrual rate, an employee's length of service shall begin on the first day of the first complete month of employment. Only a complete month of qualifying service is counted before and after a break-in-service. Previous periods of service as a state employee are counted toward annual leave accrual. Periods of military leave and active military service are included in computing annual leave if the employee complies with the requirements of A.R.S. § 38-610.
- B.** Accruing annual leave. An employee in pay status for 1/2 of a month shall accrue annual leave. A part-time employee scheduled to work 10 or more hours in a week shall accrue annual leave based on the percentage of full-time hours specified in the appointment. A part-time employee scheduled to work less than 10 hours in a week shall not accrue annual leave. A full-time employee shall accrue annual leave under the following schedule:

<u>Beginning</u>	<u>Completion</u>	<u>Monthly accrual rate</u>
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<u>1st year</u>	<u>5th year</u>	<u>10 hours</u>
<u>6th year</u>	<u>10th year</u>	<u>12 hours</u>
<u>11th year</u>	<u>20th year</u>	<u>14 hours</u>
<u>21st year</u>		<u>16 hours</u>

- C.** Progression of annual leave. An employee shall progress to the next higher accrual rate on the first day of the month following completion of the required length of service.
- D.** Using annual leave. An employee may use accrued annual leave under state and federal law and agency policy. The employee shall schedule the use of accrued annual leave through the employee's supervisor.
- E.** Maximum accumulation and disposition. An employee may accumulate annual leave without limit during a year. At the end of each year, an employee's annual leave balance shall not exceed 360 hours. It shall be the responsibility of each employee to schedule annual leave to avoid having a balance over 360 hours at the end of the year. If an employee's annual leave balance on January 1 exceeds the allowed maximum, the agency head may withdraw the excess and deposit the hours as sick leave in the employee's sick leave balance. The agency head may authorize a later date for conversion of excess annual leave if an employee's duty assignment, receipt of recognition leave, injury, or illness prevents timely use of annual leave.
- F.** Compensation for unused leave. Upon separation from agency employment, an employee is paid for any unused annual leave remaining in the employee's account at the average rate received by the employee in the last 3 years of the employee's employment or the employee's current rate of pay, whichever is higher.

R13-5-504. Civic Duty Leave

- A.** Leave to vote. Under A.R.S. § 16-401 and 16-402, an employee may be absent with pay for the time required to vote.
- B.** Jury duty. An employee shall report for jury duty as directed by a summons unless officially excused by the Jury Commissioner for reasons under A.R.S. § 21-202. When summoned, the employee shall notify or provide the immediate supervisor with a copy of the summons.
 - 1.** While on jury duty leave, an employee shall be absent with pay.
 - 2.** Upon receipt of a summons for jury duty, a commissioned employee shall notify the Jury Commissioner of the employee's peace officer status.
- C.** Witnesses. An employee subpoenaed as a witness shall be absent with pay, unless the subpoena is unrelated to agency business.
- D.** Fees. An employee on paid civic duty leave shall forward to the agency all jury duty or witness fees except for reimbursement of travel expenses.

R13-5-505. Compensatory Leave

- A.** Compensatory leave. An agency shall establish policies and guidelines for accruing compensatory leave under the overtime provisions of the Fair Labors Standards Act.
- B.** Using compensatory leave. An employee may use accrued compensatory leave under state and federal law and agency policy. The employee shall schedule the use of accrued compensatory leave through the employee's supervisor.
- C.** Payment upon separation. Upon separation from an agency, an employee shall be paid for any accrued compensatory leave remaining in the employee's account at the average rate received by the employee in the last 3 years of the employee's employment or the employee's current rate of pay, whichever is higher.

13-5-506. Donated Annual Leave

- A.** Definitions. In this Section "Recipient employee" means an agency employee who meets the eligibility requirements in A.R.S. § 41-1830.12(C).
- B.** Qualifications. An employee may give accrued annual leave to a recipient employee.
- C.** Requesting donated leave. An employee may submit a written request for donated annual leave under the agency's policy.
- D.** Donating and converting leave. When notified of an employee's need, an employee may donate accrued annual leave by submitting a written notice to Human Resources with the required information under the agency's policies. The donated hours are converted by multiplying the donor's hourly pay by the number of hours donated, and dividing the product by the hourly pay of the recipient employee. Converted hours are added to the recipient's sick leave balance as needed.
- E.** Surplus donations. When the need for donated leave passes, Human Resources shall return any unused donated leave to the donors on a pro rata basis, unless the donors give written notice to Human Resources to deposit their unused hours into an agency "donated-leave bank" to help other employees in the future.

13-5-507. Holiday Leave

- A.** Paid holidays. The agency shall observe the holidays authorized under A.R.S. § 1-301.
- B.** Eligibility. To be eligible for holiday leave, an employee shall be in pay status 10 or more hours in the work week.
 - 1.** If a holiday occurs on an employee's regular work day, the employee may be absent with pay for the number of hours regularly scheduled to work, up to a maximum of 8 hours, unless the employee is required to work to maintain essential state services.

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2. An employee required to work on a holiday shall receive pay for the time worked, and leave credits for the number of hours regularly scheduled to work on that day, up to a maximum of 8 hours.
 3. If a holiday occurs on a day when an employee is scheduled to work, but the employee is unable to work because of an illness or injury, the employee may take sick leave and accrue holiday leave credits as provided under subsection (C) for the number of hours regularly scheduled to work on that day, up to a maximum of 8 hours.
 4. An employee not scheduled to work on a holiday shall receive leave credits, up to a maximum of 8 hours.
 5. A part-time employee shall accrue prorated leave based on hours authorized to work.
- C.** Accruing holiday leave. An agency may credit holiday leave to the employee's annual leave balance or establish a separate balance for holiday leave. The agency shall add accrued holiday leave to an employee's annual or holiday leave balance.
- D.** Using holiday leave. An employee may use accrued holiday leave under state and federal law and agency policy. The employee shall schedule the use of accrued holiday leave through the employee's supervisor.

R13-5-508. Industrial Leave

An agency shall establish policies and procedures to comply with statutes regulating industrial leave under A.R.S. § 23-901, et. seq. and A.R.S. § 23-1043.02.

R13-5-509. Leave Amortization

An agency may provide a leave amortization plan for an employee planning to retire.

R13-5-510. Leave Without Pay

A. Short-term leave without pay.

1. An agency head shall place an employee on leave without pay when the employee is unable to report to work due to illness or non-industrial injury and the employee has no accrued or donated leave balance to cover the absence. The supervisor may require the employee to submit supporting documentation for sick leave without pay. If the absence exceeds 5 working days, the employee must request leave without pay as outlined in subsection (A)(2) of this Section.
2. An employee may request a leave of absence without pay of 30 working days or less by notifying the employee's manager as soon as possible and submitting a signed memorandum. The employee shall include the reason for the request and the employee's intended departure and return-to-duty dates. The agency head may approve or deny the request and may set a date for the employee's return. If the leave is approved, the employee's manager shall notify the employee in writing, including any stipulation of approval. If the employee returns on schedule, the employee shall retain the position held before the leave of absence.

B. Extended leave without pay. An employee may request an extended leave-of-absence without pay of over 30 working days by notifying the employee's manager as soon as possible and submitting a written request under the agency's policies and procedures.

1. Approval. An agency head may approve an extended leave without pay. If extended leave without pay is approved, an employee shall sign a leave of absence agreement with the agency. The leave-of-absence agreement shall outline the conditions of the leave and the employee's return to work.
2. Cancellation. An agency head may cancel a leave-of-absence without pay for any of the following reasons:
 - a. The employee violates any condition of the leave-of-absence agreement, including failure to return to work on schedule;
 - b. The agency head directs the employee to return to duty because of a need for the employee's services; or
 - c. The employee requests to return early from the leave-of-absence.
3. Return to work. An employee shall return to duty on schedule from any approved leave of absence unless an extension is approved by the agency. When an employee returns from an extended leave without pay, the agency head shall return the employee to the same position, to another position in the same classification, or to a position in a similar classification for which the employee is qualified, provided:
 - a. The employee complied with all terms of the leave-of-absence agreement, and
 - b. The employee passes background screening by the agency head.

C. Disposition of accrued leave. An employee may retain annual and sick leave balances while on an extended leave-of-absence. An employee shall be paid for any unused compensatory or holiday leave balances at the beginning of an extended leave-of-absence. If an employee is granted leave without pay to accept an uncovered appointment with the Governor, the Legislature, or another state agency, the agency head shall transfer the employee's accumulated sick leave to the receiving agency. The employee's annual leave may also be transferred if the employee and both agencies agree.

R13-5-511. Military Leave of Absence

A. Privileges of military service. An employee shall receive all rights provided by state and federal law for a military leave-of-absence under A.R.S. § 26-168 and A.R.S. § 38-610.

B. Notifying the agency. An employee expecting an assignment to military duty shall notify the immediate supervisor as soon as possible. Upon receiving orders to report, the employee shall submit a copy of the orders and a written request for

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military leave to the employee's supervisor. The supervisor shall process the request under the agency's policy and procedure for a military leave-of-absence.

- C.** Extended military leave. If an employee's orders for active duty exceed the time limit for paid military leave, the employee may request to use accrued leave or leave without pay for the remainder of the military leave.
- D.** Returning to position. Upon return from military leave-of-absence, an agency head shall restore an employee to the position held before the military leave-of-absence, or to a similar position within the employee's classification.
- E.** Promotion. Upon return from a military leave-of-absence, an employee may be promoted by the agency head if the employee's name was on a promotional list at the time of activation into military service.

R13-5-512. Recognition Leave

- A.** Employee recognition. An agency head may grant paid time off as part of recognition given to worthy employees under a formal awards program, or as an incentive for continued superior performance. The agency shall publish recognition leave guidelines for annual nominations, selections, and awards.
- B.** Adding to leave balance. An employee awarded recognition leave shall receive annual leave hours added to the employee's leave balance.

R13-5-513. Sick Leave

- A.** Definitions. The following definitions shall apply in this Section:
 - 1. "Family sick leave" means:
 - a. Providing personal care or attending to an employee's family member who has a serious illness, injury, or temporary disability;
 - b. A medical appointment or transporting a family member for consultation, examination or treatment by a licensed health care provider; or
 - c. Attendance at the death or funeral of an employee's family member.
 - 2. "Family member" means an employee's spouse, child, brother, sister, and parent by blood, marriage, adoption, or an individual for whom the employee has legal guardianship.
- B.** Accruing sick leave.
 - 1. A full-time employee shall receive 10 hours of sick leave for each month of service.
 - 2. A part-time employee working more than 10 hours per week shall receive sick leave based upon the proportion of full-time hours worked.
 - 3. The following employees are not eligible for sick leave:
 - a. A part-time employee working less than 10 hours in a week,
 - b. An Intern, and
 - c. An Intermittent employee.
 - 4. An eligible employee shall receive sick leave credit if the employee is in pay status for at least 1/2 of the employee's working days in that month.
 - 5. Sick leave may be accrued without limit.
- C.** Using sick leave. An eligible employee may use accrued sick leave after 1 month of service. A supervisor shall authorize sick leave if an employee is absent because of:
 - 1. A medical condition that makes the employee unable to perform official duties;
 - 2. An appointment with a licensed health care provider for consultation, examination, or treatment, or
 - 3. Family sick leave.
- D.** Family sick leave limits. Family sick leave shall not exceed 40 hours in a year. If an employee has used the authorized 40 hours of family sick leave and exhausted all compensatory and annual leave, the agency head may authorize the employee to use the employee's sick leave.
- E.** Supervisory review of sick leave. A supervisor may require supporting documentation for any sick leave. If an employee's use of family sick leave or regular sick leave seems abusive or violates any provision of this Section, the employee's supervisor may disapprove the sick leave and charge the absence to the employee's annual leave or leave without pay. When an employee has been on sick leave for 5 or more consecutive days, the supervisor may require the employee to submit a medical evaluation form, signed by a licensed health care provider.
- F.** Returning from sick leave. An employee shall return to duty or to limited duty as soon as the employee is able to do so with permission of the employee's physician and without posing a risk to the employee or others.
- G.** Medical review. If a supervisor is concerned about a returning employees' fitness for duty, the supervisor may request a medical evaluation under R13-5-315(B), or request that the employee be temporarily assigned to limited duty.
- H.** Forfeiture of sick leave. An employee shall forfeit accumulated sick leave upon separation from state service, unless eligible under the provisions of A.R.S. § 38-615.
- I.** Restoring sick leave. If a former employee is recalled, reinstated, or rehired within 2 years, an agency shall restore the employee's previous sick leave balance. Sick leave for which the employee received compensation under Arizona Statutes is excluded from restoration.

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- J.** Sick leave credit for Arizona state service. Upon appointment to an agency, an Arizona state employee with previously accrued sick leave may have the sick leave credit added to the employee's leave balance, provided:
1. The employee does not receive compensation for accrued sick leave upon separating from a state agency;
 2. The employee is hired within 2 years of separating from a state agency; and
 3. The employee was hired after December 31, 1996.
- K.** Agency leave policy. An agency shall establish a sick leave policy that complies with all of the provisions of the Family Medical Leave Act.

ARTICLE 6. GRIEVANCES

R13-5-601. Agency Grievance System

- A.** General. The agency shall provide a system for considering and responding to an employee grievance regarding classification, compensation, performance evaluation, and application of Council rules.
- B.** Denial. When an agency head denies an employee grievance regarding classification, compensation, performance evaluation, or application of Council rules, the agency head shall notify the Council.

R13-5-602. Council Review

- A.** General. The Council shall only review a grievance related to classification, compensation, employee appraisal system, and application of Council rules after the employee exhausts the remedies in the agency's grievance process. If the grievance remains unresolved, the employee may file a request for Council review within 20 days after the employee receives the agency's notice of denial of the grievance.
- B.** Procedure. An employee shall submit a written request for Council review of a grievance.
1. The employee's request shall include:
 - a. The specific relief sought by the employee;
 - b. The asserted factual basis for relief, and
 - c. An account of the agency's response during the internal grievance process.
 2. Upon receipt of the request, the Council shall send a copy of the request to the agency head.
- C.** Response. The agency may file a written response with the Council at any time before the Council reviews the grievance. The agency head shall send a copy of the response to the employee at least 10 days before the Council reviews the grievance. At the employee's request, the 10 days may be waived.
- D.** Informal dispositions. The Council may informally dispose of a grievance without further review of the merits, under any of the following methods:
1. By withdrawal, if the employee withdraws the grievance in writing or on the record at any time before a decision is issued;
 2. By default to the appearing party, if the employee or the agency, fails to appear at the meeting; or
 3. By stipulation, if the parties agree on the record or in writing at any time before the Council issues a decision on the grievance.
- E.** Council review. The Council shall review an employee's grievance in an open meeting. The Council shall allow the employee to make a statement in support of the grievance, and shall allow the agency an opportunity to respond. The Council may limit the length of the parties' statements. In its discretion, the Council may allow the employee or the agency to present testimonial or documentary evidence on the issue. If the Council allows a party to offer evidence, the Council shall allow the other party an opportunity to respond with argument or evidence. The Council may limit the time parties are allowed to present evidence.
- F.** Scheduling of Council review. An employee's grievance shall be scheduled for the next available business meeting of the Council but no sooner than 20 days after the grievance was received by the business manager. At the employee's request, the 20 days may be waived.
- G.** Representation by counsel. Both the agency and the employee may have counsel present during the Council's review of the grievance.
- H.** Decision. The Council shall state its decision in an open meeting. The Council shall sustain the agency's action on the grievance unless it finds the agency's denial is not supported by substantial evidence or is inconsistent with Council rules.

ARTICLE 7. DISCIPLINE AND APPEALS

R13-5-701. Causes for Discipline.

The causes for discipline are found in A.R.S. § 41-1830.15.

R13-5-702. Disciplinary Procedures

- A.** Receiving a complaint. A person may file a complaint with an agency asserting that an employee engaged in activity constituting cause for discipline and requesting that the agency head take appropriate disciplinary action against the employee.
- B.** Initiating disciplinary action. An agency head may take appropriate disciplinary action against an employee for any cause listed in A.R.S. § 41-1830.15.

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- C.** Time limit for filing a disciplinary action. An agency shall not file a disciplinary action later than 120 days after the date the agency discovers or should have discovered that the employee engaged in alleged activity constituting cause for discipline. The disciplinary action is deemed to be filed when the notice is filed with the Council, except that:
1. The 120-day time limit does not run during any criminal investigation by the employee's agency, or any other agency, if the disciplining agency informs the business manager of the pending criminal investigation and provides the business manager with all relevant case numbers and any other information requested by the Council. The agency shall provide a status report every 30 days to the business manager. The agency shall notify the business manager when a case is taken off criminal hold.
 2. At the request of an agency, the Council may, upon a showing of good cause, extend the time for an agency to file a disciplinary action up to an additional 60 days.
 3. If a manager or a supervisor is aware of the employee's alleged actions that constitutes criminal offense but fails to act the 120-day time limit does not run during the period of the manager or supervisor's inaction, if:
 - a. The supervisor or manager is disciplined for failure to act.
 - b. The offense is a misdemeanor involving theft or moral turpitude and is discovered within 120 days after the end of the 120-day period for taking disciplinary action.
 - c. The offense is a felony.
- D.** Notice of disciplinary action. An agency head shall serve a written notice on the employee within 10 days after the agency files the notice of disciplinary action with the Council. The agency head's notice shall include:
1. A statement of the nature of the disciplinary action;
 2. Any prior disciplinary action on which the current discipline is based;
 3. The effective date of the action;
 4. A specific statement of the causes; and
 5. A statement of the employee's right to appeal and the time limit in which the employee must file an appeal with the Council under R13-5-703(A), (B), and (C).
- E.** Amended notice of disciplinary action before appeal is filed. At any time before an employee files an appeal, the agency head may file with the Council and serve the employee or former employee with an amended or supplemental notice of disciplinary action.
- F.** Effect of dismissal. An employee's dismissal from the agency shall entail:
1. Dismissal from all positions held by the employee;
 2. Removal of the employee's name from all employment or promotional lists; and
 3. Termination of the employee's pay on the date of dismissal.

R13-5-703. Appeal to the Council

- A.** Appealable actions. An employee may appeal any disciplinary action that results in the employee's dismissal, demotion, suspension without pay, forfeiture of accrued leave time, or reduction of pay.
- B.** Form of appeal. To initiate an appeal, an employee shall submit a signed written appeal stating the specific grounds for the appeal.
- C.** Time for appeal. An employee shall file an appeal within 20 days after being served with the notice of disciplinary action.
- D.** Agency responsibility. An agency shall have the burden of going forward with the case once an appeal has been filed. An agency must prove the cause for disciplinary action by a preponderance of the evidence.
- E.** Effect of appeal. The Council shall determine whether the cause for the disciplinary action is supported by law and the evidence. The Council may sustain, modify, or rescind the disciplinary action. If the disciplinary action is rescinded, the Council shall order the agency head to reinstate the employee and to pay the employee accumulated back pay.
- F.** Amended notice of disciplinary action after employee files an appeal. If good cause exists, an agency head may file with the Council a motion to amend the notice of disciplinary action. The motion shall be filed no later than 30 days before the hearing.
- G.** Notice of hearing. The Council shall notify the parties of the time and place of the hearing.
- H.** Failure to appear. If a party, without good cause, fails to appear at the time and place set for a hearing, the Council may find in favor of the appearing party.
- I.** Conduct of hearings. The Council may sit as a whole at a hearing, or the chair may designate one or more of its members to hold the hearing. A record of the hearing shall be reviewed by a majority of the Council prior to making a decision in those cases where only one member has been designated to hear a case. The member or members designated to preside at a hearing may administer oaths, subpoena, and require attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or outside the state to be taken in the manner prescribed by law for like depositions in civil cases in the Superior Court of this state.
- J.** Witness fees. Witnesses at a hearing, other than employees, are entitled to the fees allowed witnesses under A.R.S. § 12-303.
- K.** Payment of witness fees. If the Council subpoenas a witness on its own initiative, the Council shall pay the witness' fees and mileage. The requesting party shall pay the fees for subpoenaed witnesses. An employee appearing as a witness on duty shall receive travel expenses from the agency and shall not be entitled to witness fees.

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L. Discovery.

1. Within 20 days after receiving a notice of appeal, the agency shall provide all material relating to the case, including all investigation materials, to the employee. For the purpose of this rule, hand-written notes substantially incorporated within a report shall not be considered investigation materials.
2. Within 20 days after receiving the agency's discovery, the employee shall provide all material relating to the defense of the employee to the agency.
3. After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.
4. If a party fails to provide material as required, the Council may preclude its use at the hearing.

M. Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, with the exception of a motion to dispose of the case. A motion not filed in accordance with this rule may be precluded by the Council.

N. Depositions:

1. On the motion of a party, the Council may order the deposition of a witness under the following circumstances:
 - a. The witness does not reside within the state or is out of state,
 - b. The witness is too ill to attend the action before the Council, or
 - c. The deposition is for the purpose of discovery in preparing a case before the Council.
2. The requesting party shall pay the expense of any deposition. An employee of the agency is not entitled to a witness fee for giving a deposition.
3. The deposition of a witness who is unavailable to appear at a hearing may be used in evidence by either party or the Council.

O. Open hearings. The Council's hearings shall be open to the public. The Council may, upon request of a party, exclude non-testifying witnesses from the hearing. The Council may keep excluded witnesses separated and prevent them from communicating with each other until all are examined. The Council may conduct a hearing in executive session under A.R.S. § 38-431.03(A)(1).

P. Legal counsel or representative. Before the hearing of any appeal, each party shall designate its legal counsel or representative for the record. The Council shall advise each party without legal counsel that the party may obtain and be represented by counsel at the hearing. At the request of a party, the Council may postpone the hearing for a reasonable length of time to allow a party to obtain legal counsel.

Q. Presentation of evidence. Both parties may present evidence and witnesses either personally or through a representative. The Council shall exclude evidence irrelevant to the causes set forth in the notice of disciplinary action.

R. Settlement of disputes. The parties may agree to settle any matter pending before the Council. The parties shall submit the terms of settlement to the Council. If the Council approves the settlement, the settlement becomes final. If no settlement is reached, or if the proposed settlement is revoked or rejected by the Council, or withdrawn by either party, or if the judgment is later vacated or reversed by the court, neither the plea discussion nor any resulting agreement or judgment shall be admissible against the employee in any hearing before the Council on this matter.

S. Decision. The Council shall render a decision within 30 days after a hearing. In arriving at a decision, the Council may consider any prior disciplinary action taken within the previous 10 years against the employee, providing the information is introduced at the hearing. The Council shall state its decision in an open meeting and shall issue the decision in writing within a reasonable time, but not to exceed 45 days, after the hearing. The Council's decision shall contain findings of fact and its order for disposition of the case.

R13-5-704. Rehearing of Council Decision

A. Motion for rehearing.

1. Except as provided in subsection (C), any party in a contested case may file a written motion for rehearing within 20 days after service of the decision. The requesting party shall specify the grounds for a rehearing, as provided in subsection (B). A respondent may file a response to the motion within 10 days after service.
2. The Council may require the parties to file written memorandums upon the issues raised in the motion and may permit oral argument.
3. The Council may grant a rehearing on all or part of the issues. If a rehearing is approved, the Council shall specify the grounds for the rehearing, and the rehearing shall cover only those matters.

B. Basis for a rehearing. The Council may grant a rehearing for any of the following causes:

1. The Council acted in an arbitrary or capricious manner or abused its discretion;
2. Misconduct of the Council or the prevailing party;
3. Newly discovered material evidence which, with reasonable diligence, could not have been discovered and produced at the original hearing;
4. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the action;
5. The decision was not supported by the evidence, or

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6. The decision is contrary to law.
- C.** Decisions not subject to rehearing. The Council may issue a decision as final upon making a specific finding that a decision's immediate effectiveness is necessary for the preservation of the public peace, health, or safety, or that a rehearing of the decision is impractical, unnecessary, or contrary to the public interest.

R13-5-705. Time Limits

Computation of time limits. In computing any period of time prescribed or allowed by this Chapter the day of the act or event from which the designated period or time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

ARTICLE 8. SEPARATION FROM EMPLOYMENT

R13-5-801. Resignation or Retirement

- A.** Notice of resignation or retirement. An employee shall resign or retire from the agency by submitting a letter addressed to the agency head and stating the effective date of the separation.
- B.** Oral resignation or retirement. If an employee resigns or retires orally rather than in writing, the employee's manager shall document the employee's stated separation date and forward the notice through the chain-of-command to the agency head.
- C.** Abandonment of position. If an employee abandons a position, it shall be deemed to be a voluntary resignation from the agency. The employee's manager shall document the employee's failure to show up for work and forward the notice through the chain-of-command to the agency head.
- D.** Refusal of resignation. An agency head may refuse to accept a resignation and may dismiss an employee under R13-5-701(B).
- E.** Withdrawal of resignation. An employee may withdraw a resignation only by submitting to the agency head a written notice of withdrawal before the employee's separation date. If a withdrawal is not submitted before the separation date, the resignation is final unless both the agency head and the employee agree to withdraw the resignation.

R13-5-802. Reduction in Force

- A.** General. The agency head may conduct a reduction in force when necessary because of a decrease in authorized positions, service area, funding, program responsibilities, or because of a legislative or executive mandate. If the reduction in force involves removal of a filled position, the agency shall not re-establish the position for 2 years, unless removal of the position was caused by fiscal constraints, legislative action, or court order.
- B.** Alternate methods. An agency head may pursue alternative methods of reducing costs without reducing the number of employees. Council approval will be required when:
1. Temporarily reducing all employees' pay, or
 2. Assigning all employees time off without pay.
- C.** Order of layoff. An employee shall be separated from an agency in the following order of preference:
1. Internship appointment,
 2. Intermittent appointment,
 3. Part-time appointment,
 4. Provisional appointment,
 5. Probationary limited-term appointment who has not established permanent status,
 6. Limited-term appointment who has completed a probationary period but has not established permanent status,
 7. Probationary appointment in a non-limited term position, and
 8. Permanent status appointment.
- D.** Laying off a probationer and special duty assignee. An employee on promotional probation or special duty shall compete for retention in the highest classification for which the probationer or assignee hold permanent status.
- E.** Laying off a limited-term employee. A limited-term employee shall compete for retention only against other limited-term employees.
- F.** Laying off a permanent status employee. If it becomes necessary to reduce the number of full-time employees holding regular appointments, an agency shall use the following method:
1. An employee with the least seniority within a classification shall be the first employee reduced from that classification.
 2. An employee who is declared surplus to a classification may displace only the least senior employee in other classifications in which the employee previously held seniority rights.
- G.** Determining seniority. Seniority within a classification shall be determined by the number of retention points of an employee. An employee with a greater number of retention points will be senior to another employee with lesser retention points within a classification.
- H.** Using retention points. Regular employees who have the least retention points shall be considered first for transfer, classification reduction, or separation.

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- I.** Calculation of retention points within a classification. An employee shall receive 1 retention point for each month of service within the employee's classification.
- J.** Calculation of retention points in a classification for which the employee has established rights. If an employee is transferred to a classification previously held by the employee, the employee shall receive 1 retention point for each month of service in that classification and 1 retention point for each month of service in a higher or equal classification.
- K.** Eligibility for retention points. The following guidelines shall be used in determining an employee's eligibility for retention points:
 - 1. If the employee was in pay status for at least 1/2 of the employee's working days in that month.
 - 2. An employee shall receive credit for agency service before a separation if the separation was less than 2 years.
 - 3. An employee shall receive credit for periods of military leave under 38 U.S.C. § 4311.
 - 4. An employee shall receive credit for periods of uncovered appointments with the agency.
 - 5. An employee's prior state service in a position transferred to the agency shall be counted.
 - 6. An employee shall not receive credit for periods constituting a break-in-service. However, periods of time before and after such break-in-service shall be counted.
- L.** Resolution of a tie. If employees have the same number of retention points, the agency shall resolve tied scores by applying the following tie-breakers in the following order of precedence:
 - 1. The employee with the greatest length of qualifying service with the agency.
 - 2. The employee with the greatest length of qualifying service with the state.
 - 3. The employee who placed highest on the eligibility list for the classification, or
 - 4. If a tie continues to exist, it shall be broken by a lottery system.
- M.** Offer of a position in a different classification. An employee who meets the qualification for a different classification but has not previously established displacement rights may be offered reassignment to a position within that classification provided that such reassignment does not displace another employee in that classification.
- N.** Notifying employees. An agency shall give written notice at least 20 days in advance to each employee being reassigned or separated. The Council may waive the 20 day notice upon proper justification for a reduced time limit. The agency's notice shall include the number of retention points assigned to the employee, the effective date of the action, the new job classification, the pay rate, the location of the position, the employee's right to request a review of the action, and the employee's recall rights, if applicable.
- O.** Employee request for review.
 - 1. Within 5 days of receipt of a reassignment or separation notice, an employee may submit a written request to the agency head for a review of the procedures resulting in the employee's reassignment or separation. The employee's request shall contain information concerning any errors in the calculation of retention points and a proposed resolution. The agency head shall review the request and respond to the employee within 5 days after receipt of the request.
 - 2. An employee who wishes further review may submit a written request to the Council within 20 days after receiving the agency head's response. The Council shall investigate and respond to the employee and the agency head by submitting a final decision on the review within 30 days after receiving the employee's request.
- P.** Employee assistance. An agency shall establish a plan to assist all employees who are separated from the agency through a reduction in force.
- Q.** Reappointment list. If a permanent status employee is appointed to a lower classification as a result of a reduction in force or reallocation, Human Resources shall place the employee's name on a reappointment list for the last classification held and any previously held classification for which the employee is still qualified.
- R.** Recall list. If an employee is laid off due to a reduction in force, Human Resources shall place the former employee's name on a recall list for the last classification held and any previously held classification for which the former employee qualifies.
- S.** Order of names. On both recall and reappointment lists, Human Resources shall arrange the names of former employees in descending order of their retention points. If candidates have the same number of retention points, Human Resources shall resolve tied scores by applying the following tie-breakers in the following order of precedence:
 - 1. The employee with the greatest length of qualifying service with the agency.
 - 2. The employee with the greatest length of qualifying service with the state.
 - 3. The employee who placed highest on the eligibility list for the classification, or
 - 4. If a tie continues to exist, it shall be broken by a lottery system.
- T.** Duration of list. A former employee's name shall remain on a recall list for up to 3 years from the date of separation. The name of a reappointment candidate shall remain on the reappointment list until promoted or the employee separates from the agency.
- U.** Background screening. A candidate on a recall list shall be subject to a background screening process.

R13-5-803. Disability

An agency head shall establish policies and procedures for discontinuing the employment of an employee who becomes disabled and is unable to perform the essential functions of the job. Such policies and procedures shall comply with the applicable state and federal laws.

R13-5-804. Public Safety Retirement System Eligibility

A. Membership in the Arizona Public Safety Retirement System is designated by the Council under A.R.S. § 38-842(19)(a). Commissioned employees in the following classifications shall be eligible for membership in the Public Safety Retirement System:

1. Director
2. Deputy Director
3. Assistant Director
4. Bureau Chief
5. Major
6. Captain
7. Lieutenant
8. Sergeant I
9. Sergeant II
10. Officer
11. Fixed Wing Pilot
12. Rotary Wing Pilot

B. Employees who were in the following classifications on December 1, 1972 shall be eligible for membership in the Public Safety Retirement System.

1. Communications Technician
2. Radio Mechanic

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY

PREAMBLE

1. Sections Affected

R18-15-101
Article 5
R18-15-501
R18-15-502
R18-15-503
R18-15-504
R18-15-505
R18-15-506
R18-15-507
Article 6
R18-15-601
R18-15-602
R18-15-603
Article 7
R18-15-701

Rulemaking Action

Amend
New Article
New Section
New Article
New Section
New Section
New Section
New Article
New Section

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

Authorizing statute: A.R.S. § 49-1203

Implementing statutes: A.R.S. §§ 49-1223(A)(5), 49-1225(C), 49-1243(A)(6), 49-1243(C), 49-1245(C), and 49-1268(B)(2)

3. The effective date of the rules.

May 10, 2000

4. A list of all previous notices appearing in the Register addressing the final rule.

Notice of Rulemaking Docket Opening: 6 A.A.R. 298, January 7, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 135, January 7, 2000

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

Name: Greg Swartz, Executive Director

Address: Water Infrastructure Finance Authority

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202 East Earll Drive, Suite 480
Phoenix, AZ 85012

Telephone: (602) 230-9770

Fax: (602) 230-1480

6. An explanation of the rule, including the agency's reason for initiating the rule.

The proposed Article 5 and the proposed amendments to Article 1 clarify WIFA's responsibility to fund technical assistance and to establish criteria for WIFA's Board of Directors to award technical assistance to specific applicants for specific water and wastewater projects. The proposed Article 6 clarifies WIFA's responsibility to award hardship grants for wastewater projects in accordance with federal and state law and related regulation.

The proposed Article 7 clarifies WIFA's responsibility to set interest rates and forgive loan principal.

7. A reference to any study the agency relies on in its evaluation of or justification for the final rule and where the public may obtain or receive the study, all data underlying each study, any analysis of the study and other supporting material:

WIFA did not rely on a formal study to support the final rule. In reference to the proposed Article 5, WIFA has observed that applicants for financial assistance, particularly in rural areas, are often not ready to proceed to invest in drinking water and wastewater facilities. The lack of readiness to proceed is often due to an undefined project scope, erroneous project assumptions, or a failure to properly plan and design for major infrastructure investments. By proposing Article 5 and by allocating financial resources, WIFA intends to provide technical assistance to communities to enable logical and consistent project development in support of infrastructure investments.

In reference to the proposed Articles 6 and 7, WIFA intends to clarify its existing authority to provide hardship grants and set interest rates.

8. 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.

Not applicable

9. The summary of the economic, small business, and consumer impact.

A. Introduction.

The Water Infrastructure Finance Authority of Arizona (WIFA), is a public financing agency. It does not regulate any consumer or business. WIFA's purpose is to provide financial and technical assistance. WIFA is a self-supporting agency and pays administrative costs from income or from a maximum of 4% of federal capitalization grants.

B. Potential Impacts on Regulated Industry.

WIFA concluded that this rulemaking will impact the following regulated industries:

1. **Drinking Water Facility** (A.R.S. § 49-1201): a community water system or a non-profit noncommunity water system as defined in the Safe Drinking Water Act (P.L. 93-523; 88 STAT. 1660; P.L. 95-190; 91 STAT. 1393; P.L. 104-182; 110 STAT. 1613) that is located in Arizona excluding water systems owned by federal agencies.
2. **Wastewater Treatment Facility** (A.R.S. § 49-1201): a facility as defined in the clean water act, located in this state which is designed to hold, cleanse or purify or to prevent the discharge of untreated or inadequately treated sewage or other polluted waters for purposes of complying with the clean water act.

The impact to these industries is beneficial. WIFA emphasizes that although a cost is associated with obtaining financial and technical assistance, applicants initiate requests for financial and technical assistance to obtain funding to come into compliance or correct a problem. Without the financial and technical assistance available through WIFA, many communities would otherwise find it difficult, if not impossible, to obtain funding to achieve compliance or correct problems associated with water quality standards. Thus, the net impact upon the regulated industries represents a cost-savings benefit.

C. Social Impacts.

This rulemaking is not expected to have a quantifiable social cost. This is because compliance by the regulated industry is not a requirement for the rule, but a goal as the result of funding "out-of-compliance" facilities. It is not anticipated that the rule amendments will add any deadweight-welfare losses (policy changes that make people worse off), adjustment costs for displaced resources, or other business or market costs. Because WIFA does not anticipate any type of reduction in industry output, deadweight-welfare losses are expected to be zero, that is, because no losses in consumers' and producers' surplus are anticipated. Finally, this rulemaking will not have an impact on state revenues.

D. Anticipated Impacts on Employment, Revenues, and Expenditures.

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This rulemaking is expected to have either a positive or neutral impact on short, and long-term employment, production or revenues.

E. General Impact on Small Businesses and Reduction of Impacts.

WIFA directs financial and technical assistance to assist small businesses, in the form of drinking water utilities and small communities because those entities tend to have the smallest user base and are less likely to be able to upgrade or rehabilitate their infrastructure. Therefore the general impact is a greater availability for financial and technical assistance to improve infrastructure.

F. The probable costs and benefits to the political subdivisions directly affected.

The political subdivisions directly affected include drinking water facilities and wastewater facilities. These facilities are impacted in the same manner as small business in that they can now solve infrastructure problems with financial and technical assistance.

In the case of a political subdivision that may receive a low-interest loan from the drinking water revolving fund, WIFA may forgive the principal. Forgivable principal is done in the form of negative interest. The cost from this decision is a reduction in the revolving fund, but the benefit is expected to be improved compliance and continued operation and maintenance of the system. WIFA does not intend to deplete the revolving fund by loaning it out and then forgiving all the principal. WIFA intends to use this option in the instance that it can benefit the facility long-term and without a negative impact on the fund.

In the case of a political subdivision seeking financial and technical assistance from the clean water revolving fund, WIFA may provide a hardship grant if certain criteria are met. The hardship grant program is currently principally funded by a one-time federal grant that limits eligible recipients to communities from rural areas on the clean water revolving fund priority list.

G. The probable cost-benefit to government agencies.

The Arizona Corporation Commission (ACC) is minimally affected by these rules because the private drinking water facilities must request a rate increase from the ACC to ensure payment of the loan. Additionally, most loans for financial and technical assistance are anticipated to be of a small enough size that rate increases to cover the loans will not be necessary.

H. Data limitations and methods employed to attempt to obtain data if adequate data were not available.

WIFA will continue to utilize ADEQ databases of eligible drinking water and wastewater systems in the state as a source of data to solicit applications for financial and technical assistance. Additionally, through annual public meetings and workshops throughout the state, eligible systems are aware of WIFA's financial and technical assistance. Based on WIFA's experience and ongoing interaction with water and wastewater systems throughout the state, including stakeholder meetings, WIFA believes it understands the infrastructure needs of small systems and communities and has reflected these needs within this proposed rulemaking.

I. The probable benefits outweigh the probable costs.

This rulemaking is atypical for a government agency, because most government agencies are in the business of education, compliance, and enforcement. WIFA's goal is to provide financial and technical assistance, which in some instances may trigger an increase in user rates for the consumer. However, it is believed that the rate will be lower than could have been achieved by any other alternative method.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules.

Minor grammatical and stylistic changes were made throughout the rules at the request of G.R.R.C. staff. To facilitate comparisons between the proposed rules (all are new rules other than amendments to R18-15-101 to add new definitions) and the final rules, deletions are struck through and additions are in bold.

ISSUE: Use of correct stem

CONCLUSION: The proposed rule was edited as follows:

~~In this Chapter the following terms mean:~~ **In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, and 49-371, 49-1201 terms of this Article, unless otherwise specified, have the following meanings:**

ISSUE: In consultation with G.R.R.C. staff, WIFA concluded additional definitions would add clarity to the rules.

CONCLUSION: The following definitions were added to R18-15-101:

“Operational technical assistance” means the use of monies for a specific water or wastewater system to assist that system to improve its operations. (new 31 within R18-15-101)

“Policy technical assistance” means the use of monies by or on behalf of the Authority to conduct research, conduct studies, conduct surveys, develop guidance, and performs related activities that benefit more than 1 water or wastewater system. (new 32 within R18-15-101)

“Technical Assistance Intended Use Plan” means the document prepared by the Authority identifying the intended sources and uses of funding for technical assistance. (new 43 within R18-15-101)

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ISSUE: In consultation with G.R.R.C. staff, WIFA edited the definition of Project Technical Assistance.

CONCLUSION: R18-15-101 was edited as follows:

37. "Project technical assistance" means ~~assistance to~~ **the use of monies for a** specific water or wastewater system to assist that system achieve ~~legal,~~ technical, managerial, or financial ~~capacity~~ **capacity capability** and to facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water or wastewater system.

ISSUE: In consultation with G.R.R.C. staff, WIFA edited the numbering sequence for definitions within R18-15-101.

CONCLUSION: R18-15-101 was edited to reflect the correct number of existing definitions (41) and to reflect the addition of new definitions (4) for a total of 45.

ISSUE: Identification of Technical Assistance Intended Use Plan.

CONCLUSION: The proposed rule, R18-15-501, was edited as follows:

The Board shall publish a Technical Assistance Intended Use Plan for each year in which it anticipates that it will fund technical assistance. At a minimum, the **Technical Assistance** Intended Use Plan shall include: a description of the types of technical assistance the Board expects to fund; the sources and uses of funds for technical assistance; a Drinking Water Project Technical Assistance Priority List; and a Wastewater Project Technical Assistance Priority List. The Board shall adopt the Technical Assistance Intended Use Plan after providing for public comment and review.

ISSUE: Statutory References

CONCLUSION: The proposed rule, R18-15-502(A), was edited as follows:

To be eligible to receive project technical assistance, an applicant shall own or operate a drinking water or wastewater system eligible for financial assistance under ~~Title 49, Chapter 8, Sections 1223(A)1 and 1242(A)1~~ **A.R.S. §§ 49-1223(A)(1) or 49-1243(A)(1)**.

ISSUE: G.R.R.C. Recommended Language Clarifications

CONCLUSION: The proposed rule, R18-15-502(B), was edited as follows:

A project eligible under subsection (A) of this Section ~~that applies for Project Technical Assistance~~ shall also meet all of the following requirements:

1. The system serves fewer than 10,001 people.
2. Proposed project technical assistance will assist the system **to** achieve technical ~~capacity~~ **capacity capability** pursuant to R18-15-105, managerial and institutional ~~capacity~~ **capacity capability** pursuant to R18-15-106, or financial ~~capacity~~ **capacity capability** pursuant to R18-15-104.
3. Proposed project technical assistance will facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water or wastewater system.

ISSUE: G.R.R.C. Recommended Language Clarifications

CONCLUSION: The proposed rule, R18-15-503(1), was edited as follows:

Project technical assistance ~~Grants grants~~ to local units of government. If consultants are required to complete the project technical assistance, the **grant agreement shall specify that the** local unit of government ~~must is required to~~ select and pay consultants in accordance with applicable procurement requirements.

ISSUE: G.R.R.C. Recommended Language Clarifications

CONCLUSION: The proposed rule, R18-15-504, was edited as follows:

The Board ~~will shall~~ award no more than ~~twenty five percent (25%)~~ **25%** of the total annual funding allocated by the Board to project technical assistance within the Technical Assistance Intended Use Plan to a single project in the form of project technical assistance described in R18-15-503(A) or R18-15-503(B). The Board may increase this maximum for an individual project if the Board determines at a public meeting that the proposed project requires additional assistance beyond the maximum ~~as requested,~~ is justified by the applicant, and ~~the Board determines that it is~~ in the public's interest.

ISSUE: G.R.R.C. Recommended Language Clarifications

CONCLUSION: The proposed rule, R18-15-505(A), was edited as follows:

Each year the Board shall adopt the Drinking Water Project Technical Assistance Priority List and the Wastewater Project Technical Assistance Priority List for the **annual** funding cycle detailed within **described in** the Technical Assistance Intended Use Plan. The Board shall not adopt lists for ~~years where~~ **a year in which** funds are not adequate to assist any projects.

ISSUE: G.R.R.C. Recommended Language Clarifications

CONCLUSION: The proposed rule, R18-15-505(E), was edited as follows:

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The Board shall consider all comments **given orally at the public meeting or** submitted in writing ~~prior to the meeting, given orally at the meeting, submitted in writing at the meeting, or submitted subsequent to meeting but prior to~~ before the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. The Board shall summarize all of the comments received, prepare responses, and adopt the project technical assistance priority lists.

ISSUE: G.R.R.C. Recommended Language Clarifications

CONCLUSION: The proposed rule, R18-15-505(F), was edited as follows:

Throughout the funding cycle, the Board may make additions or modifications ~~subsequent to~~ **after** the adoption of the final project technical assistance priority lists when 1 or more of the following conditions is met:

1. Funds become available to cover the cost of the project and to honor funding commitments made to other projects.
2. The additions or modifications are made at a public meeting of the Board.

ISSUE: G.R.R.C. Recommended Language Clarifications

CONCLUSION: The proposed rule, R18-15-505(H), was edited as follows:

The Board shall provide project technical assistance to eligible applicants for proposed projects in priority order according to the project technical assistance priority ~~List~~ **lists** developed pursuant to this Section. If the Board determines that an applicant will not be able to proceed with a project, the Board shall bypass that project. The Board shall provide **written** notice to the applicant that the project has been bypassed. The Board shall replace the bypassed project with the next project on the project technical assistance priority lists in rank order that is ready to accept technical assistance.

ISSUE: G.R.R.C. Recommended Language Clarifications

CONCLUSION: The proposed rule, R18-15-506(C), was edited as follows:

Class B -- The Board may designate a project as Priority Class B if ~~one~~ **1 or more** of the following conditions exists:

1. The applicant has been issued an administrative order by a regulatory authority.
2. The applicant is subject to a court order or decision.
3. The applicant has entered into a voluntary compliance agreement with a regulatory authority.
4. The applicant has entered into a corrective action plan **established** by a regulatory authority, which may include restrictions on construction, connections, or development.

ISSUE: G.R.R.C. Recommended Language Clarifications

CONCLUSION: The proposed rule, R18-15-506(D), was edited as follows:

Class C -- The Board may designate a technical assistance project as Priority Class C if the goal of the project is to upgrade or rehabilitate existing ~~capacity~~ **capacity** or existing facility design.

ISSUE: G.R.R.C. Recommended Language Clarifications

CONCLUSION: The proposed rule, R18-15-507, was edited as follows:

- A. The Board shall ~~score~~ **rank** projects within priority classes using priority values obtained from the following formula: $PV = PF + LFC + CF$ where:

PV = Priority Value

PF = Population Factor

LFC = Local Fiscal Capacity

CF = Contribution Factor

- B. Population Factor (PF) – The Board shall award PF points **up** to a maximum of 60 points as follows:

1. ~~60~~ **Sixty** points if the system serves ~~up to~~ 2,500 **or fewer** people.
2. ~~45~~ **Forty-five** points if the system serves ~~between~~ 2,501 ~~and to~~ 5,000 people.
3. ~~30~~ **Thirty** points if the system serves ~~between~~ 5,001 ~~and to~~ 7,500 people.
4. ~~15~~ **Fifteen** points if the system serves ~~between~~ 7,501 ~~and to~~ 10,000 people.
5. **Zero** points if the system serves **more than 10,000 people**.

- C. Local Fiscal Capacity (LFC) -- The Board shall award LFC points up to a maximum of 80 points as follows:

1. Median Household Income (MHI) -- The Board shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:

- a. ~~40~~ **Forty** points if the area's MHI is less than 25% of the state's MHI.
- b. ~~30~~ **Thirty** points if the area's MHI is ~~between at least~~ 25% ~~and but less than~~ 50% of the state's MHI.
- c. ~~20~~ **Twenty** points if the area's MHI is ~~between 51% and~~ **at least 50% but less than** 75% of the state's MHI.
- d. ~~10~~ **Ten** points if the area's MHI is ~~between 76% and~~ **at least 75% but less than** 100% of the state's MHI.
- e. ~~0~~ **Zero** points if the area's MHI is **100% or more than 100%** of the state's MHI.

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2. User Fees -- The Board shall divide the applicant's ~~present~~ **proposed** residential user fees, rates, and charges by the service area's MHI (present user fees, rates, and charges/area MHI) to award points as follows:
 - a. ~~20~~ **Twenty** points if the rates are more than 2% of the area's MHI.
 - b. ~~10~~ **Ten** points if the rates are ~~between 1% and to~~ 2% of the area's MHI.
 - c. ~~0~~ **Zero** points if the rates ~~area is~~ **are** less than 1% of the area's MHI.
3. Investment -- The Board shall divide existing indebtedness, and existing investments by the service area's MHI (investment/area MHI) to award points as follows:
 - a. ~~20~~ **Twenty** points if the existing investment is more than 1% of the area's MHI.
 - b. ~~10~~ **Ten** points if the existing investment is ~~between .5% and to~~ 1% of the area's MHI.
 - c. ~~0~~ **Zero** points if the existing investment is less than .5% of the area's MHI.
- D. Contribution Factor (CF) – The Board shall award CF points **up** to a maximum of 60 points. ~~The Board shall award CF points~~ as follows:
 1. ~~60~~ **Sixty** points if the applicant contributes 50% or more of the project costs.
 2. ~~45~~ **Forty-five** points if the applicant contributes ~~between at least 37.5% and 49.9%~~ **but less than 50%** of the project costs.
 3. ~~30~~ **Thirty** points if the applicant contributes ~~between at least 25% and 37.4%~~ **but less than 37.5%** of the project costs.
 4. ~~15~~ **Fifteen** points if the applicant contributes ~~between at least 12.5% and 29.4%~~ **but less than 25%** of the project costs.
 5. ~~0~~ **Zero** points if the applicant contributes ~~between zero percent and 12.4%~~ less than 12.5% of the project costs.

An applicant's contribution can include cash contributions, in-kind contributions, and contributions financed by loans or debt from any source including a loan from the Authority.

- E. The Board shall use the most recent federal or state data to determine the applicant's service population and median household income and the state's median household income. If the Board or the applicant determines that this data is insufficient, the applicant shall use a reliable and impartial entity to conduct a population or income survey of the applicant's service area.
- F. After scoring within each class, the Board shall rank tied scores by placing the applicant serving the smallest population above all other tied applications in the class.

ISSUE: Incorporate Statutory Language

CONCLUSION: The proposed rule, R18-15-601(A) was edited as follows:

The Authority may provide hardship grants for any of the following purposes:

1. In accordance with A.R.S. § 49-1267(D)(1), financial assistance in the form of grants to political subdivisions and Indian Tribes to design, plan, acquire, construct, or improve wastewater collection and treatment facilities.
2. In accordance with A.R.S. § 49-1267(D)(2), technical assistance ~~to plan, acquire, construct or improve wastewater collection and treatment facilities~~ **related to the operation and maintenance of wastewater systems.**

ISSUE: G.R.R.C. Recommended Language Clarifications and edits to statutory references.

CONCLUSION: The proposed rule, R18-15-602 was edited as follows:

- A. To be eligible to receive financial assistance an applicant shall propose a project to design, plan, acquire, construct, or improve wastewater collection and treatment facilities owned by political subdivisions or Indian ~~Tribes~~ **tribes.**
- B. ~~A project~~ **An applicant** eligible under subsection (A) of this Section shall also meet all of the following requirements before receiving financial assistance:
 1. ~~An~~ **The applicant has applied for Hardship Grant Financial Assistance **financial assistance** in accordance with R18-15-102(A), (B), and (E).**
 2. The project ~~shall appear~~ **is** on the Clean Water Revolving Fund Priority List developed pursuant to R18-15-204, R18-15-205, and R18-15-206.
 3. The applicant ~~must be~~ **is** a community in a rural area.
 4. The applicant ~~must be~~ **is** a community of more than a single household but no more than 3,000 ~~inhabitants~~ **persons** as measured by the most recent ~~state data~~ **United States decennial census.**
 5. The applicant ~~must be~~ **is** a community that lacks centralized wastewater treatment or collection systems or needs improvements to ~~onsite~~ wastewater treatment systems.
 6. On the date the applicant applies for assistance, the per capita annual income of the community's residents ~~must does~~ not exceed ~~80 percent~~ **80%** of national per capita income.
 7. On the date the applicant applies for assistance, the community's local unemployment rate exceeds by ~~one~~ 1 percentage point or more the most recently reported average yearly national unemployment rate.

ISSUE: G.R.R.C. Recommended Language Clarifications

CONCLUSION: The proposed rule, R18-15-603(A), was edited as follows:

The Board shall award financial assistance to eligible applicants for proposed projects in priority order according to the priority list ~~development developed~~ pursuant to R18-15-204, R18-15-205, and R18-15-206. If the Board determines that an eligible applicant will not be able to proceed with a project, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has been bypassed. The Board ~~may~~ **shall** replace the bypassed project with the next eligible applicant and eligible project on the Clean Water Revolving Fund Priority List in rank order

ISSUE: Insert criteria considered by WIFA Board

CONCLUSION: Based on consultations with G.R.R.C. staff, the proposed rule, R18-15-603(B), was edited as follows:

The Board shall award financial assistance to eligible ~~recipients~~ **applicants in amounts in accordance with Board criteria adopted and as periodically modified by the Board at public meetings of the Board after allowing for public review and comment based on the priority class assigned to an applicant's project under R18-15-205, the local fiscal capacity points assigned to an applicant under R18-15-206(G), and an applicant's ability to generate sufficient revenues to pay debt service.**

ISSUE: Insert criteria considered by WIFA Board

CONCLUSION: Based on consultations with G.R.R.C. staff, the proposed rule, R18-15-701, was edited as follows:

- A. The Authority shall prescribe the rate of interest, including interest rates as low as a minimum of ~~zero percent~~ **0% and eligibilities and procedures for the Authority to and may forgive principal on Authority loans, bond purchase agreements, and linked deposit guarantees in accordance with Board criteria adopted and as periodically modified by the Board at public meetings of the Board after allowing for public review and comment based on the priority class assigned to an applicant's project under R18-15-205 or R18-15-305, the local fiscal capacity points assigned to an applicant under R18-15-206(G) or R18-15-306(G), and an applicant's ability to generate sufficient revenues to pay debt service.**
- B. The Authority may forgive principal on Authority loans, bond purchase agreements, and linked deposit guarantees made to local units of government to plan, acquire, construct, or improve drinking water facilities.
- C. **In accordance with subsection (B) of this Section, the Authority may forgive principal based on the priority class assigned to an applicant's project under R18-15-305, the local fiscal capacity points assigned to an applicant under R18-15-306(G), and an applicant's ability to generate sufficient revenues to pay debt service.**

11. A summary of the principal comments and the agency response to them.

The Authority received formal written comments from the Office of the State Treasurer regarding the source of population data. The Authority incorporated the modifications to R18-15-602(B)(4).

Prior to the Proposed Rulemaking, the Authority received recommended edits from the Office of the State Treasurer in its capacity as a member of the Board of Directors of the Authority. After consulting with the Treasurer's Office, the Authority incorporated the majority of the recommended edits into the Proposed Rulemaking.

Prior to the Proposed Rulemaking, the Authority's Board of Directors and a group of stakeholders submitted minor oral and written comments. After consulting with the Authority's Board members and the stakeholders group, the Authority incorporated the majority of the recommended edits into the Proposed Rulemaking.

Following the Proposed Rulemaking, the Authority received recommended edits from staff with the Governor's Regulatory Review Council (G.R.R.C.). After consulting G.R.R.C. staff, the Authority incorporated the recommended edits into the Final Rulemaking.

At the public hearing held February 14, 2000, there were no written or oral comments submitted.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

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

Not applicable

14. Was the rule adopted as an emergency rule.

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 15. DEPARTMENT OF WATER QUALITY
WATER INFRASTRUCTURE FINANCE AUTHORITY
ARTICLE 1. MANAGEMENT**

Section

R18-15-101. Definitions

ARTICLE 5. TECHNICAL ASSISTANCE

Section

R18-15-501. Technical Assistance Intended Use Plan
R18-15-502. Eligibility Requirements for Project Technical Assistance
R18-15-503. Types of Project Technical Assistance Available
R18-15-504. Maximum Amount of Project Technical Assistance
R18-15-505. Project Technical Assistance Priority List
R18-15-506. Project Technical Assistance Priority Classes
R18-15-507. Project Technical Assistance Priority Scoring Criteria

ARTICLE 6. HARDSHIP GRANT FUND

Section

R18-15-601. Types of Assistance Available
R18-15-602. Eligibility Requirements for Hardship Grant Financial Assistance
R18-15-603. Hardship Grant Financial Assistance Awards

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

Section

R18-15-701. Interest Rate Setting and Forgivable Principal

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY
ARTICLE 1. MANAGEMENT**

R18-15-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-201, and ~~49-374~~ 49-1201, the terms of this Article, unless otherwise specified, have the following meanings:

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
6. No change.
7. No change.
8. No change.
9. No change.
10. No change.
11. No change.
12. No change.
13. No change.
14. No change.
15. No change.
16. No change.
17. No change.
18. No change.
19. No change.
20. No change.
21. No change.
22. No change.
23. No change.
24. No change.

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- 25. No change.
- 26. No change.
- 27. No change.
- 28. No change.
 - a. No change.
 - b. No change.
 - c. No change.
 - d. No change.
- 29. No change.
- 30. No change.
- 31. “Operational technical assistance” means the use of monies for a specific water or wastewater system to assist that system to improve its operations.
- 32. “Policy technical assistance” means the use of monies by or on behalf of the Authority to conduct research, conduct studies, conduct surveys, develop guidance, and perform related activities that benefit more than 1 water or wastewater system.
- ~~33~~33.No change.
- ~~32~~34.No change.
- ~~33~~35.No change.
- ~~34~~36.No change.
- 37. “Project technical assistance” means the use of monies for a specific water or wastewater system to assist that system achieve technical, managerial, or financial capability and to facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water or wastewater system.
- ~~35~~38.No change.
- ~~36~~39.No change.
- ~~37~~40.No change.
- ~~38~~41.No change.
- ~~39~~42.No change.
- 43. “Technical Assistance Intended Use Plan” means the document prepared by the Authority identifying the intended sources and uses of funding for technical assistance.
- ~~40~~44.No change.
- ~~41~~45.No change.

ARTICLE 5. TECHNICAL ASSISTANCE

R18-15-501. Technical Assistance Intended Use Plan

The Board shall publish a Technical Assistance Intended Use Plan for each year in which it anticipates that it will fund technical assistance. At a minimum, the Technical Assistance Intended Use Plan shall include: a description of the types of technical assistance the Board expects to fund; the sources and uses of funds for technical assistance; a Drinking Water Project Technical Assistance Priority List; and a Wastewater Project Technical Assistance Priority List. The Board shall adopt the Technical Assistance Intended Use Plan after providing for public comment and review.

R18-15-502. Eligibility Requirements for Project Technical Assistance

- A.** To be eligible to receive project technical assistance, an applicant shall own or operate a drinking water or wastewater system eligible for financial assistance under A.R.S. §§ 49-1223(A)(1) or 49-1243(A)(1).
- B.** A project eligible under subsection (A) shall also meet all of the following requirements:
 - 1. The system serves fewer than 10,001 people.
 - 2. Proposed project technical assistance will assist the system to achieve technical capability pursuant to R18-15-105, managerial and institutional capability pursuant to R18-15-106, or financial capability pursuant to R18-15-104.
 - 3. Proposed project technical assistance will facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water or wastewater system.
- C.** The Board shall provide project technical assistance to eligible applicants in priority order according to the priority list developed pursuant to R18-15-504.

R18-15-503. Types of Project Technical Assistance Available

The Board may award project technical assistance in any one or a combination of the following forms:

- 1. Project technical assistance grants to local units of government. If consultants are required to complete the project technical assistance, the grant agreement shall specify that the local unit of government is required to select and pay consultants in accordance with applicable procurement requirements.
- 2. Consultants selected and paid by the Authority to provide project technical assistance on behalf of the recipient of the project technical assistance award.
- 3. Project technical assistance loans subject to terms and conditions approved by the Board.

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R18-15-504. Maximum Amount of Project Technical Assistance

The Board shall award no more than 25% of the total annual funding allocated by the Board to project technical assistance within the Technical Assistance Intended Use Plan to a single project in the form of project technical assistance described in R18-15-503(A) or R18-15-503(B). The Board may increase this maximum for an individual project if the Board determines at a public meeting that the proposed project requires additional assistance beyond the maximum, is justified by the applicant, and is in the public's interest.

R18-15-505. Project Technical Assistance Priority Lists

- A.** Each year the Board shall adopt the Drinking Water Project Technical Assistance Priority List and the Wastewater Project Technical Assistance Priority List for the annual funding cycle described in the Technical Assistance Intended Use Plan. The Board shall not adopt lists for a year in which funds are not adequate to assist any projects.
- B.** When the project technical assistance priority lists are required pursuant to subsection (A), the Board shall rank the projects by priority class (alphabetized with A as the highest priority class), priority points, and the year the applicant requested project technical assistance.
- C.** An applicant seeking placement on either project technical assistance priority list shall make a request for placement of 1 or more proposed projects on or before a date specified by the Board. When requesting placement on either project technical assistance priority list, an applicant shall submit an application specified by the Board.
- D.** The Board shall prepare draft project technical assistance priority lists and shall hold at least one public meeting to receive comments on the lists and make copies of the draft project technical assistance priority lists available to the public at least 7 days before the meeting date.
- E.** The Board shall consider all comments given orally at the public meeting or submitted in writing before the close of the written comment period. The Board shall establish a written comment period and shall publish the date upon which the comment period closes in the meeting notice. The Board shall summarize all of the comments received, prepare responses, and adopt the project technical assistance priority lists.
- F.** Throughout the funding cycle, the Board may make additions or modifications after the adoption of the final project technical assistance priority lists when 1 or more of the following conditions are met:
 - 1.** Funds become available to cover the cost of the project and to honor funding commitments made to other projects.
 - 2.** The additions or modifications are made at a public meeting of the Board.
- G.** After an opportunity for public comment at a public meeting of the Board, the Board may remove a project from the project technical assistance priority lists under any 1 of the following circumstances:
 - 1.** The applicant has completed the technical assistance project.
 - 2.** The project is no longer an eligible project.
 - 3.** The applicant requests removal.
- H.** The Board shall provide project technical assistance to eligible applicants for proposed projects in priority order according to the project technical assistance priority lists developed pursuant to this Section. If the Board determines that an applicant will not be able to proceed with a project, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has been bypassed. The Board shall replace the bypassed project with the next project on the project technical assistance priority lists in rank order that is ready to accept technical assistance.

R18-15-506. Project Technical Assistance Priority Classes

- A.** The Board shall evaluate each application submitted and place it into a priority class.
- B.** Class A -- The Board shall designate a project as Priority Class A if both the following conditions exist:
 - 1.** The goal of the project is to eliminate either of the following:
 - a.** An environmental nuisance as defined in A.R.S. § 49-141.
 - b.** A public health hazard declared by a regulatory authority.
 - 2.** Corrective action or mitigation measures have been initiated as evidenced by 1 or more of the following:
 - a.** An administrative order issued by a regulatory authority.
 - b.** A court order or decision.
 - c.** A voluntary compliance agreement with a regulatory authority.
 - d.** The implementation of a corrective action plan by a regulatory authority, which may include restrictions on construction, connections, or development.
 - e.** A voluntary corrective action plan implemented by the applicant and evidenced by restrictions or moratoriums.
- C.** Class B -- The Board shall designate a project as Priority Class B if 1 or more of the following conditions exists:
 - 1.** The applicant has been issued an administrative order by a regulatory authority.
 - 2.** The applicant is subject to a court order or decision.
 - 3.** The applicant has entered into a voluntary compliance agreement with a regulatory authority.
 - 4.** The applicant has entered into a corrective action plan established by a regulatory authority, which may include restrictions on construction, connections, or development.
- D.** Class C -- The Board shall designate a technical assistance project as Priority Class C if the goal of the project is to upgrade or rehabilitate existing capability or existing facility design.

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R18-15-507. Project Technical Assistance Priority Scoring Criteria

- A.** The Board shall rank projects within priority classes using priority values obtained from the following formula: $PV = PF + LFC + CF$ where:
PV = Priority Value
PF = Population Factor
LFC = Local Fiscal Capacity
CF = Contribution Factor
- B.** Population Factor (PF) – The Board shall award PF points up to a maximum of 60 points as follows:
1. Sixty points if the system serves 2,500 or fewer people.
 2. Forty-five points if the system serves 2,501 to 5,000 people.
 3. Thirty points if the system serves 5,001 to 7,500 people.
 4. Fifteen points if the system serves 7,501 to 10,000 people.
 5. Zero points if the system serves more than 10,000 people.
- C.** Local Fiscal Capacity (LFC) -- The Board shall award LFC points up to a maximum of 80 points as follows:
1. Median Household Income (MHI) -- The Board shall divide the MHI from the area served by the applicant by the state's MHI (Service Area MHI/State MHI) to award points as follows:
 - a. Forty points if the area's MHI is less than 25% of the state's MHI.
 - b. Thirty points if the area's MHI is at least 25% but less than 50% of the state's MHI.
 - c. Twenty points if the area's MHI is at least 50% but less than 75% of the state's MHI.
 - d. Ten points if the area's MHI is at least 75% but less than 100% of the state's MHI.
 - e. Zero points if the area's MHI is 100% or more of the state's MHI.
 2. User Fees -- The Board shall divide the applicant's proposed residential user fees, rates, and charges by the service area's MHI (present user fees, rates, and charges/area MHI) to award points as follows:
 - a. Twenty points if the rates are more than 2% of the area's MHI.
 - b. Ten points if the rates are 1% to 2% of the area's MHI.
 - c. Zero points if the rates are less than 1% of the area's MHI.
 3. Investment -- The Board shall divide existing indebtedness and existing investments by the service area's MHI (investment/area MHI) to award points as follows:
 - a. Twenty points if the existing investment is more than 1% of the area's MHI.
 - b. Ten points if the existing investment is .5% to 1% of the area's MHI.
 - c. Zero points if the existing investment is less than .5% of the area's MHI.
- D.** Contribution Factor (CF) – The Board shall award CF points up to a maximum of 60 points as follows:
1. Sixty points if the applicant contributes 50% or more of the project costs.
 2. Forty-five points if the applicant contributes at least 37.5% but less than 50% of the project costs.
 3. Thirty points if the applicant contributes at least 25% but less than 37.5% of the project costs.
 4. Fifteen points if the applicant contributes at least 12.5% but less than 25% of the project costs.
 5. Zero points if the applicant contributes less than 12.5% of the project costs.
 6. An applicant's contribution can include cash contributions, in-kind contributions, and contributions financed by loans or debt from any source including a loan from the Authority.
- E.** The Board shall use the most recent federal or state data to determine the applicant's service population and median household income and the state's median household income. If the Board or the applicant determines that these data are insufficient, the applicant shall use a reliable and impartial entity to conduct a population or income survey of the applicant's service area.
- F.** After scoring within each class, the Board shall rank tied scores by placing the applicant serving the smallest population above all other tied applications in the class.

ARTICLE 6. HARDSHIP GRANT FUND

R18-15-601. Types of Assistance Available

- A.** The Authority may provide hardship grants for any of the following purposes:
1. In accordance with A.R.S. § 49-1267(D)(1), financial assistance in the form of grants to political subdivisions and Indian tribes to design, plan, acquire, construct, or improve wastewater collection and treatment facilities.
 2. In accordance with A.R.S. § 49-1267(D)(2), technical assistance related to the operation and maintenance of wastewater systems.
- B.** The Board shall describe projects and proposed assistance in the Clean Water Revolving Fund Intended Use Plan, developed pursuant to R18-15-203.

R18-15-602. Eligibility Requirements for Hardship Grant Financial Assistance

- A.** To be eligible to receive financial assistance an applicant shall propose a project to design, plan, acquire, construct, or improve wastewater collection and treatment facilities owned by political subdivisions or Indian tribes.

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- B.** An applicant eligible under subsection (A) shall also meet all of the following requirements before receiving financial assistance:
1. The applicant has applied for financial assistance in accordance with R18-15-102(A), (B), and (E).
 2. The project is on the Clean Water Revolving Fund Priority List developed pursuant to R18-15-204, R18-15-205, and R18-15-206.
 3. The applicant is a community in a rural area.
 4. The applicant is a community of more than a single household but no more than 3,000 persons as measured by the most recent United States decennial census.
 5. The applicant is a community that lacks centralized wastewater treatment or collection systems or needs improvements to wastewater treatment systems.
 6. On the date the applicant applies for assistance, the per capita annual income of the community's residents does not exceed 80% of national per capita income.
 7. On the date the applicant applies for assistance, the community's local unemployment rate exceeds by 1 percentage point or more the most recently reported average yearly national unemployment rate.

R18-15-603. Hardship Grant Financial Assistance Awards

- A.** The Board shall award financial assistance to eligible applicants for proposed projects in priority order according to the priority list developed pursuant to R18-15-204, R18-15-205, and R18-15-206. If the Board determines that an eligible applicant will not be able to proceed with a project, the Board shall bypass that project. The Board shall provide written notice to the applicant that the project has been bypassed. The Board shall replace the bypassed project with the next eligible applicant and eligible project on the Clean Water Revolving Fund Priority List in rank order.
- B.** The Board shall award financial assistance to eligible applicants based on the priority class assigned to an applicant's project under R18-15-205, the local fiscal capacity points assigned to an applicant under R18-15-206(G), and an applicant's ability to generate sufficient revenues to pay debt service.

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

R18-15-701. Interest Rate Setting and Forgivable Principal

- A.** The Authority shall prescribe the rate of interest, including interest rates as low as 0% on Authority loans, bond purchase agreements, and linked deposit guarantees based on the priority class assigned to an applicant's project under R18-15-205 or R18-15-305, the local fiscal capacity points assigned to an applicant under R18-15-206(G) or R18-15-306(G), and an applicant's ability to generate sufficient revenues to pay debt service.
- B.** The Authority may forgive principal on Authority loans, bond purchase agreements, and linked deposit guarantees made to local units of government to plan, acquire, construct, or improve drinking water facilities.
- C.** In accordance with subsection (B) of this Section, the Authority may forgive principal based on the priority class assigned to an applicant's project under R18-15-305, the local fiscal capacity points assigned to an applicant under R18-15-306(G), and an applicant's ability to generate sufficient revenues to pay debt service.