

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

[R05-443]

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

Notice of Proposed Rulemaking: 11 A.A.R. 4227, October 28, 2005

2. Sections Affected

Rulemaking Action

R13-5-101	Amend
R13-5-201	Amend
R13-5-302	Amend
R13-5-305	Amend
R13-5-307	Amend
R13-5-309	Amend
R13-5-312	Amend
R13-5-501	Amend
R13-5-503	Amend
R13-5-507	Amend
R13-5-513	Amend
R13-5-702	Amend
R13-5-703	Amend
R13-5-804	Amend

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

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

Implementing statutes: A.R.S. §§ 38-1101, 41-382(19)(a), 41-1714, 41-1830.11, 41-1830.12, 41-1830.13, and 41-1830.14

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

Name: Commander C. H. Johnston, Business Manager

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

Telephone: (602) 223-2286

Fax: (602) 223-2096

E-mail: Cjohnston@azdps.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Law Enforcement Merit System Council (Council) completed a major rewrite of the rules on May 10, 2000. It was anticipated that some minor revisions would be needed following such a major rewrite. A rule revision committee was created to provide an annual review of the rules to ensure the rules remained current and clear. This is another revision intended to clarify the rules as proposed by the rules revision committee. Changes to A.R.S. § 38-1101 in the 2004 and 2005 legislative sessions necessitate changes to the discipline and hearing rules (R13-5-702 and R13-5-703).

Arizona Administrative Register / Secretary of State
Notices of Supplemental Proposed Rulemaking

6. An explanation of the substantial change which resulted in this supplemental notice:

In the Preamble, the economic, small business, and consumer impact statement had an error. Under Section R13-5-201, an extra sentence was inserted referring to R13-5-307. Though this sentence was correct, it did not belong in this location.

In the full text, under Section R13-5-305(G), there is an error in the wording. The text indicates that the candidate can ask the Business Manager to review the examination. The very next subsection makes it clear that the intent is to have the candidate be able to review the examination questions in the presence of the Business Manager. This language is being corrected.

In the full text, under R13-5-703(L)(1) there was an error in formatting. This error, though not a significant change, was corrected.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

Throughout the proposed rulemaking, numbers have been changed to conform with the format established by the Secretary of State and the Governor's Regulatory Review Council. Other changes were made to correct punctuation or misuse of words, in order to clarify the rule. These will now be addressed individually.

R13-5-101

The revision to R13-5-101 will not have an economic impact. It revises four definitions and adds one additional definition that clarifies the rules.

R13-5-201

The revision to R13-5-201 will have a minor economic impact. The Department will realize a cost saving by reducing the cost of reproducing paper copies of job descriptions that exist on the DPS web site.

R13-5-302

The revision to R13-5-302 will not have an economic impact. The revision merely eliminates or relocates a portion of the rule that is duplication of another rule (R13-5-305). To ensure that the inspection of examination results is available to employees of the agency, a new subsection (I) is added that refers the employee to R13-5-305(G).

R13-5-305

The revision to R13-5-305 will not have an economic impact. This revision combines language from R13-4-302(H), R13-5-305(F), and R13-5-305(H) into one place. This is the new R13-5-305(G) dealing with the inspection of examination results. This revision also clarifies how an employee returning from military leave is to be given an opportunity to take any promotional examination that was missed and how that employee's placement on any existing list will occur. It also makes it clear that an employee who is terminated will be removed from any promotion list. Subsection (P) is also being deleted in order to conform with actual practice. In order to avoid the need for the Human Resources Bureau to produce a new eligibility list, the old list is normally certified as being valid until it is expired.

R13-5-307

The revision to R13-5-307 will not have an economic impact. This revision merely brings the length of a reinstatement list to match other eligibility lists.

R13-5-309

The revision to R13-5-309 will not have an economic impact. This change is merely clarifying the process of interviewing potential employees.

R13-5-312

The revisions to R13-5-312 will have minimal economic impact on the agencies. It will provide a benefit to both the agencies and the employees alike. Employees will be afforded protection during a reduction-in-force. Agencies will find that employees are more willing to accept these positions that were formerly considered to be limited-term positions.

R13-5-501

The revision to R13-5-501 will not have an economic impact. It will have a benefit for agencies and employees alike by clarifying the intent of the rules regarding accrual of leave time for both full-time and part-time employees.

R13-5-503

The revision to R13-5-503 will not have an economic impact. This revision, along with the revision in R13-5-501 will help clarify the method of accruing leave time. There are also some minor changes that are being made to bring the rule in line with the intent of the rule revision of July 7, 2003.

Arizona Administrative Register / Secretary of State
Notices of Supplemental Proposed Rulemaking

R13-5-507

The revision to R13-5-507 will not have an economic impact. It will, however, provide a benefit to the agency by clarifying that the holiday cannot be used to accrue the hours necessary to gain the holiday.

R5-13-513

The revision to R13-5-513 will not have an economic impact. This revision changes the definition of “family member” to be consistent with the statutory definition and with that used in R13-5-506.

R13-5-702

The revision to R13-5-702 will have a minimal economic impact upon the agencies. The revision will have a benefit to both the employee and the agency alike by allowing the agency more time to handle investigations and to serve discipline notices when an employee is absent from the agency and an investigation is not possible due to this absence. This revision also will result in a better structural organization of the rule regarding exceptions to the time limit for filing a disciplinary action. It also clarifies that service of disciplinary action shall be completed in accordance with R13-5-104(D).

R13-5-703

The revision to R13-5-703 will not have an economic impact. This revision is necessitated by legislative action in revising A.R.S. § 38-1101. The agency was already required to perform these things, but with different time limits. Everything required by the statute was already being done by the agency. This revision also establishes a more reasonable time period for the Council to provide a written decision after a hearing.

R13-5-804

The revision to R13-5-804 will not have an economic impact. This revision makes it easier to deal with those employees who are eligible for the Public Safety Personnel Retirement System when changes are made to job titles.

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

Name: Commander C. H. Johnston, Business Manager
Address: Law Enforcement Merit System Council
P.O. Box 6638
Phoenix, AZ 85005
Telephone: (602) 223-2286
Fax: (602) 223-2096
E-mail: Cjohnston@azdps.gov

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

Following submission to the Secretary of State and the Notice of Supplemental Proposed Rulemaking being published in the *Arizona Administrative Register*, written comments will be received at the address listed in item #9 for a period of 30 days after publication. A public hearing will be scheduled if one is requested. Otherwise, the record will be closed at the end of the 30-day period following the publication in the *Arizona Administrative Register*. If a public meeting is requested, the record will be closed at the end of the public meeting.

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

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

ARTICLE 1. GENERAL PROVISIONS

Section
R13-5-101. Definitions

ARTICLE 2. CLASSIFICATION AND COMPENSATION

Section
R13-5-201. Classification

ARTICLE 3. EMPLOYMENT

Section
R13-5-302. Examinations
R13-5-305. Promotion
R13-5-307. Reinstatement
R13-5-309. Selection
R13-5-312. Limited Term Appointments

ARTICLE 5. EMPLOYEE LEAVE

Section
R13-5-501. Employee Leave Guidelines
R13-5-503. Annual Leave
R13-5-507. Holiday Leave
R13-5-513. Sick Leave

ARTICLE 7. DISCIPLINE AND APPEALS

Section
R13-5-702. Disciplinary Procedures
R13-5-703. Appeals to the Council

ARTICLE 8. SEPARATION FROM EMPLOYMENT

Section
R13-5-804. Public Safety Personnel Retirement System Eligibility

ARTICLE 1. GENERAL PROVISIONS

R13-5-101. Definitions

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

“Break-in-service” means a period of absence from agency service of more than ~~30 consecutive working days~~ 240 consecutive working hours resulting from an employee’s resignation, retirement, suspension, layoff, or leave of absence without pay.

“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)~~ Arizona Peace Officer Standards and Training Board certification as a peace officer.

“Limited-term appointment” means an appointment to a position that is designated as temporary, ~~or is not funded by the agency’s legislative appropriation.~~

“Qualifying pay period” means a pay period in which an employee is in pay status for at least one-half of the employee’s

Arizona Administrative Register / Secretary of State
Notices of Supplemental Proposed Rulemaking

normally scheduled work week.

“Reappointment” means appointment to a classification previously held by a ~~permanent status~~ an employee who was reappointed to a different classification, ~~during a reduction in force.~~

ARTICLE 2. CLASSIFICATION AND COMPENSATION

R13-5-201. Classification

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- 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.~~ and are available on the DPS web site.
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - 2. No change
- I. No change
 - 1. No change
 - 2. No change
- J. No change
- K. No change

ARTICLE 3. EMPLOYMENT

R13-5-302. Examinations

- A. No change
- B. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- D. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- G. No change
 - 1. No change

Arizona Administrative Register / Secretary of State
Notices of Supplemental Proposed Rulemaking

- 2. No change
- H. Examination results notification. Human Resources shall mail notification of examination results to each competitor. ~~Within 10 business days after the examination results are mailed, a competitor may file with the business manager a written request that the business manager review all examination questions, answers, scoring methods, procedures, and decisions. A competitor requesting a business manager's review shall outline the specific areas the competitor believes are in error.~~
 - 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.~~
 - 3. ~~If the business manager determines the error is not correctable and the defective portion of the exam is critical to the examination process, Human Resources shall re-administer that portion of the examination under guidelines provided by the business manager.~~
- I. Review of examinations. Any employee who has tested for promotion may request an examination review under R13-5-305 (G).
- ~~I.J.~~ No change
- ~~J.K.~~ No change

R13-5-305. Promotion

- A. No change
- B. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - 2. No change
- C. No change
- D. No change
- E. No change
- ~~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.F.~~ No change
- 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.~~
- G. Inspection of examination results. Within 10 days after the examination results are mailed, 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. A competitor requesting a business manager's review shall outline the specific areas the competitor believes are in error. If the business manager believes the competitor may have a valid challenge to the examination, the competitor may be allowed to review the examination, in the presence of the business manager or an employee authorized by the business manager, to determine if the competitor has a valid basis for a challenge to the examination.
 - 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. 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.

Arizona Administrative Register / Secretary of State
Notices of Supplemental Proposed Rulemaking

4. If the business manager's review discloses an error, the business manager shall return the examination to Human Resources for correction.
5. If an error affects the scores of other competitors, Human Resources shall revise all incorrect scores.
6. If the business manager determines the error is not correctable and the defective portion of the exam is critical to the examination process, Human Resources shall re-administer that portion of the examination under guidelines provided by the business manager.
7. Only the Council, business manager, competitor, competitor's attorney and the agency head may inspect a competitor's examination.

~~I.H.~~ No change

~~J.L.~~ 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 subject to the original promulgation of the list.

~~K.J.~~ No change

~~L.K.~~ No change

~~M.L.~~ No change

~~N.M.~~ No change

~~O.N.~~ No change

~~P.~~ 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.

~~Q.O.~~ 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, or
2. The candidate resigns or is terminated from agency service, ~~or~~
3. ~~The internal list expires.~~

~~R.P.~~ No change

~~S.Q.~~ No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

~~T.R.~~ No change

R13-5-307. Reinstatement

A. No change

B. Duration of the list. A reinstatement list shall remain in force for a maximum of ~~1 year.~~ 18 months. ~~At the agency head's request, the Council may extend the duration of the list for 6 months periods at a time.~~

C. No change

R13-5-309. Selection

A. No change

B. Interviewing. ~~If the hiring manager does not select a transfer or the top candidate from the certified list, the hiring manager shall interview all candidates requesting a transfer, and at least one but no more than~~ and may interview up to three candidates from each certified list.

C. No change

D. No change

E. No change

F. No change

R13-5-312. Limited-Term Appointments

A. Limited-term ~~position appointment.~~ A limited-term ~~position is either~~ appointment is an appointment to a position designated as 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 obtain~~ 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. No change

C. No change

D. No change

1. No change
2. No change

E. No change

- 1. No change
- 2. No change
 - a. No change
 - b. No change

ARTICLE 5. EMPLOYEE LEAVE

R13-5-501. Employee Leave Guidelines

- A. Full-time employee. Accrual of leave.** ~~A full-time~~ An employee may accrue the following types of paid leave:
 - 1. Annual leave,
 - 2. Holiday leave, and
 - ~~3. Recognition leave, and~~
 - ~~4.~~ Sick leave.
- B. Accruing leave.** An eligible employee shall accrue leave for a pay period if the employee is in pay status for at least one half the employee's normal scheduled work week.
- C. Part-time employees.** A part time employee scheduled to work 20 or more hours in a week shall accrue leave based on the percentage of full-time hours specified in the appointment. An employee scheduled to work less than 20 hours in a week shall not accrue leave.
- ~~**B.D.**~~ No change
- ~~**C.E.**~~ 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.

R13-5-503. 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~~ qualifying pay period of employment. Only a ~~complete month of qualifying service~~ qualifying pay period 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 eligible employee shall accrue leave if the employee is in pay status for at least one-half of the employee's scheduled work week in that pay period. ~~A part-time employee scheduled to work 20 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 20 hours in a week shall not accrue annual leave.~~ A full-time employee shall accrue annual leave under the following schedule:

Beginning	Completion	Biweekly accrual rate	Beginning	Completion	Biweekly accrual rate
Beginning	Completion	Biweekly accrual rate	21st year		7.39 hours
1st year	5th year	4.62 hours			
6th year	10th year	5.54 hours			
11th year	20th year	6.47 hours			

- C. Progression of annual leave.** An employee shall progress to the next higher accrual rate on the first day of the ~~month~~ pay period following completion of the required length of service.
- D.** No change
- E.** No change
- F.** No change

R13-5-507. Holiday Leave

- A.** No change
- B. Eligibility.** To be eligible for holiday leave, ~~an~~ a full-time employee shall be in pay status 10 or more hours in the work week. A part-time employee shall be in pay status 5 or more hours in the work week. The holiday hours that would be accrued cannot be used to satisfy any part of this requirement.
 - 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.
 - 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.

Arizona Administrative Register / Secretary of State
Notices of Supplemental Proposed Rulemaking

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. No change
D. No change

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.~~ "Family member" means a spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.
- B. Accruing sick leave.
1. A full-time employee shall receive 4.62 hours of sick leave biweekly.
 - ~~2. A part-time employee working more than 20 hours per week shall receive sick leave based upon the proportion of full-time hours worked.~~
 - ~~3.~~ 2. The following employees are not eligible for sick leave:
 - a. A part-time employee working less than 20 hours in a week,
 - b. An Intern, and
 - c. An Intermittent employee.
 - ~~4.~~ 3. An eligible employee shall receive sick leave credit if the employee is in pay status for at least one half of the employee's ~~working days in that month.~~ normally scheduled work week.
 - ~~5.~~ 4. 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. No change
E. No change
F. No change
G. No change
H. Forfeiture of sick leave. An employee shall forfeit accumulated sick leave upon separation from State service, unless eligible for payment under the provisions of A.R.S. § 38-615.
I. No change
J. No change
 1. No change
 2. No change
 3. No change
K. No change

ARTICLE 7. DISCIPLINE AND APPEALS

R13-5-702. Disciplinary Procedures

- A. No change
B. No change
C. Interview of an employee. An agency shall be governed in the interview of an employee being investigated for possible disciplinary action by A.R.S. § 38-1101(A) and (B).
~~C.~~ D. 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,~~

Arizona Administrative Register / Secretary of State
Notices of Supplemental Proposed Rulemaking

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 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.~~
 - e. ~~The offense is a felony.~~

E. Exceptions to the 120-day rule.

1. The 120-day time limit does not run:
 - a. During any criminal investigation by any police or prosecutorial agency, or
 - b. During any period of time the employee who is the subject of an investigation is absent from the agency on leave, if that absence prevents the agency from proceeding with the normal investigation and disciplinary review process.
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 up to a maximum of 90 days beyond the original 120-day period.
3. If a manager or a supervisor is aware of the employee's alleged actions that constitute a criminal offense but fails to act, the 120-day time limit does not run during the period of the manager's or supervisor's inaction if the supervisor or manager is disciplined for failure to act, and
 - a. 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., or
 - b. The offense is a felony.
4. It shall be the responsibility of the agency to maintain sufficient documentation to support the placement of the investigation on hold, including the beginning and ending dates of the hold.

~~D.E.~~ **E.** 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. Service shall be completed in accordance with R13-5-104(D). 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.G.~~ No change

~~F.H.~~ No change

1. No change
2. No change
3. No change

R13-5-703. Appeal to the Council

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
- I. No change
- J. No change
- K. No change
- 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, Within three business days after receiving a written request from the employee, the agency shall provide a complete copy of the investigative file, as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation, to the employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered investigation materials.

Notices of Supplemental Proposed Rulemaking

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. No later than five business days before the appeal hearing, or, if the appeal hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the appeal hearing, the agency and the employee shall exchange copies of any documents that may be introduced at the hearing and that have not been previously disclosed.
 5. No later than five business days before the appeal hearing, or, if the appeal hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the appeal hearing, the agency and the employee shall exchange the names of all witnesses who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An agency shall not discipline, retaliate against or threaten to retaliate against any witness for agreeing to be interviewed or for testifying or providing evidence in the appeal hearing.
 6. No later than five business days before the appeal hearing, the agency and the employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.
 - 4-7. If a party fails to provide material as required, the Council may preclude its use at the hearing.
- M. No change
- N. No change
- O. No change
1. No change
 - a. No change
 - b. No change
 - c. No change
 2. No change
 3. No change
- P. No change
- Q. No change
- R. No change
- S. No change
- T. No change
- U. Decision. The Council shall state its decision in an open meeting and shall issue the decision in writing within 45 days after the hearing. ~~The Council shall render a decision in writing within 20 days after a hearing.~~ In arriving at a decision, the Council may consider any disciplinary action taken within the previous 10 years against the employee, if 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.

ARTICLE 8. SEPARATION FROM EMPLOYMENT

R13-5-804. Public Safety Personnel Retirement System Eligibility

- A. Membership in the Arizona Public Safety Personnel Retirement System is designated by the Council under ~~A.R.S. § 38-842 (19)(a)~~ A.R.S. § 38-842(20)(a). ~~Commissioned employees in the following classifications are eligible for membership in the Public Safety Personnel Retirement System:~~
1. ~~Director,~~
 2. ~~Deputy Director,~~
 3. ~~Assistant Director,~~
 4. ~~Bureau Chief,~~
 5. ~~Commander,~~
 6. ~~Lieutenant,~~
 7. ~~Sergeant II,~~
 8. ~~Sergeant I,~~
 9. ~~Officer,~~
 10. ~~Fixed Wing Pilot, and~~
 11. ~~Rotary Wing Pilot.~~
- B. Employees who were in the following non-commissioned classifications on December 1, 1972, shall be eligible for membership in the Public Safety Personnel Retirement System:
1. Communications Technician
 2. Radio Mechanic