

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1995, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register.

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

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R2-5-903 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. § 41-763(6)
Implementing statute: A.R.S. § 41-783(14)
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Gordon Carrigan
Human Resources Generalist

Address: Department of Administration
1831 West Jefferson, Room 107
Phoenix, Arizona 85007

Telephone: (602) 542-4784
Fax: (602) 542-4507
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The proposed rule is a new Section that establishes procedures for initiating and implementing a temporary reduction in force of state service employees for no more than 30 working days due to a temporary lack of federal or state funding for state programs. Because recent events related to the federal budget that could affect state services indicated a need for this rule, it was certified as an emergency rule effective January 4, 1996. This rulemaking process will establish the rule as permanent.
5. **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.
6. **The preliminary summary of the economic, small business, and consumer impact:**
 - A. **Economic, small business, and consumer impact summary.**
 1. **Proposed rulemaking**
The rule establishes procedures for initiating and implementing a temporary reduction in force of state service employees for no more than 30 working days due to a temporary lack of federal or state funding for state programs.
 2. **Information contained in this report**
The rule directly affects state service employees and has an indirect impact on small businesses and consumers. State service employees selected for temporary reduction in force will lose income. The overall negative impact on small businesses and consumers will depend upon the level of services that is affected by the length of time that the reduction continues.
 3. **Name and address of agency personnel who can submit additional data on the information included in this statement.**
Same as information listed in Question 3.

Arizona Administrative Register
Notices of Proposed Rulemaking

B. Economic, small business, and consumer impact statement

1. Proposed rulemaking

The rule establishes procedures for initiating and implementing a temporary reduction in force of state service employees for no more than 30 working days due to a temporary lack of federal or state funding for state programs.

2. Persons who are affected, bear costs, or directly benefit

Cost bearers: The proposed rule is not expected to impose any cost upon any small business or consumer. The rule affects state service employees who incur loss of income.

Beneficiaries: There are no beneficiaries of this proposed rule.

3. Cost/benefit analysis

Costs/revenues scale: Annual costs/revenues changes are designated as minimal when less than \$1,000 in additional costs or revenues, moderate when between \$1,000 and \$10,000 in additional costs or revenues, and substantial when greater than \$10,000 in additional costs or revenue.

a. Probable costs and benefits to the implementing agencies: This is no financial benefit to any agency. State agencies may incur some costs associated with maintaining insurance benefits for employees, but such costs will vary with the number of employees affected and the duration of benefits coverage. Also, state agencies may incur some costs associated with preparing and implementing reductions in force. No costs can be projected until specific situations arise.

b. Probable costs and benefits to a political subdivision: None

c. Probable costs and benefits to business: None

Cost/benefit summary: Not applicable

Cost/benefit conclusion: Not applicable

4. Private and public employment impact

The employment impact is on state service employees affected by a reduction in force.

5. Impact on small businesses

a. An identification of the small businesses subject to the proposed rulemaking: No small business is subject to this rule.

b. The administrative and other costs required for compliance with the proposed rulemaking: None.

c. A description of the methods that the agency may use to reduce the impact on small businesses: Not applicable.

d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking: Not applicable.

6. Probable effect on state revenues

There may be some effect on tax revenues due to loss of income to be taxed.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking.

Not applicable.

7. 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: Claudia Smith, Communications Unit Manager

Address: Department of Administration
1831 West Jefferson, Room 103
Phoenix, Arizona 85007

Telephone: (602) 542-4894

Fax: (602) 542-4507

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

No public proceeding is scheduled. A person may submit written comments or a written request that an oral proceeding be held on the proposed rules. Requests must be submitted no later than 5 p.m., April 12, 1996, to the following person:

Name: Gordon Carrigan, Human Resources Generalist

Address: Department of Administration
1831 West Jefferson, Room 107
Phoenix, Arizona 85007

Telephone: (602) 542-4784

Fax: (602) 542-4507

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

Not applicable.

Arizona Administrative Register
Notices of Proposed Rulemaking

10. Incorporations by reference and their location in the rules:
None.

11. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION

ARTICLE 9. SEPARATIONS

Section

R2-5-903. Temporary Reduction in Force

ARTICLE 9. SEPARATIONS

R2-5-903. Temporary Reduction in Force

A. General

1. When funding necessary to pay employees is suspended or reduced, a temporary reduction in force may be conducted and shall be processed in accordance with the provisions of this rule.
2. If funding to pay employees is suspended or reduced, an agency may request approval from the Director to conduct a temporary reduction in force and shall submit the plan and procedure the agency proposes to follow. The plan and procedure shall state:
 - a. The reason for the temporary reduction in force;
 - b. The budget program or programs affected;
 - c. The classes affected;
 - d. The amount of shortfall, total number of employees affected, and the name and Fair Labor Statutes Act status of affected employee or employees;
 - e. The unit subject to or affected by the temporary reduction in force, e.g., budget program, class, class series, agency, and number of employees in the affected unit;
 - f. When the agency was notified of the funding suspension and/or reduction;
 - g. Assessment of a temporary reduction in force on the agency's ability to deliver essential services;
 - h. What alternatives have been considered and why they were rejected;
 - i. The number of funded, vacant positions within the agency, what efforts the agency has made to place employees in other positions within the agency, or with other state agencies;
 - j. Expected resolution; and
 - k. The result of funding discussions with the Department of Administration Finance Division official or officials.
3. A personnel action that will affect the temporary reduction in force shall not be initiated or implemented after the date of the agency head's request to the Director for a temporary reduction in force except to process a personnel action to accomplish, or assist in accomplishing, the purpose of the temporary reduction in force will be given preference for placement in any funded vacant positions within the agency for which they qualify. Preference for placement shall be based upon retention points.
4. A temporary reduction in force shall not exceed 30 working days from the date of implementation of the plan. If the agency is advised at any time during the designated 30 working days that funding for the affected positions will be terminated or permanently reduced, an agency

head shall plan and conduct a reduction in force as prescribed by R2-5-902 if the agency cannot make other arrangements to forestall a reduction in force.

5. An agency head shall not approve the use of any paid leave except compensatory leave for an employee who is designated for temporary reduction in force. An approved paid or unpaid leave in progress for an employee who is designated for temporary reduction in force shall be cancelled effective the day that the temporary reduction in force begins. The agency head shall notify the affected employee in writing of the cancellation of the approved leave.
 6. Pay for time on temporary reduction in force may only be restored to an employee if and to the extent to which it is specifically authorized by Congress or the legislature.
 7. An employee who is affected by a temporary reduction in force pursuant to subsection (A)(1) shall return to work in the same position occupied at the start of the temporary reduction in force if funding is fully restored, sufficient attrition has occurred, or an alternate source of funding becomes available.
 8. Failure or inability to return to work may be considered a resignation, result in separation without prejudice, or be cause for dismissal. An employee who is unable to return to work due to a non-job-related medical condition shall provide the agency head a statement from a licensed health care practitioner substantiating the employee's inability to return to work.
- B. Administration. A temporary reduction in force shall be administered by the Director in the following manner:
1. In an agency affected by a temporary reduction in force, employees shall be separated in the order listed below before any action is taken that affects permanent-status employees. The separation of these employees must accomplish, or assist in accomplishing, the purpose of the temporary reduction in force:
 - a. Permanent-status employees who volunteer for a temporary reduction in force,
 - b. Provisional employees,
 - c. Clerical pool employees,
 - d. Temporary employees,
 - e. Seasonal employees,
 - f. Original probationary employees,
 - g. Limited employees.
 2. Retention points shall be used to identify full-time or part-time permanent-status employees to be placed on temporary reduction in force based on the employee's relative standing on the retention list. Identification of employees to be considered 1st for furlough shall begin with the employee with the lowest number of retention points.
 3. Retention points shall be based on length of state services and performance, calculated in accordance with subsections (C)(1), (D), and (E) below.
 4. Employees on promotional probation, detail to special duty, or underfilling a position shall compete for reten-

Arizona Administrative Register
Notices of Proposed Rulemaking

tion in their promotional probation, detail to special duty, or underfill classes.

C. Calculation of retention points for length of service.

1. Each permanent-status employee shall be awarded 1 retention point for each year of state service. Service of more than 6 months shall be counted as 1 point.
2. Periods of services as a state service employee prior to a resignation or dismissal shall not be counted.
3. Periods of state service as a provisional, seasonal, temporary, limited, or clerical pool employee shall not be counted.
4. Periods of military leave with or without pay shall be counted.
5. Periods of service on mobility assignment shall be counted.
6. Continuous uninterrupted service in a position prior to its transfer to state service by legislative action or otherwise from a budget unit of the state shall be counted.

D. Calculation of retention points for performance. The most recent performance evaluation concluded prior to the date of the request for temporary reduction in force shall be used in determining retention points. If any employee has not had a performance evaluation in the past 12 months, the employee shall be awarded 12 retention points. Retention points for performance shall be awarded as follows:

1. Each employee having an overall performance evaluation of standard or above shall be awarded 12 retention points.
2. Each employee having an overall performance evaluation

of less than standard shall be awarded 0 retention points.

E. Resolution of ties. Ties in total retention points shall be broken in the following manner and order:

1. Ties shall be broken by the employee with the highest overall performance rating in the class currently held by the employee;
2. If a tie continues to exist, the tie shall be broken by the employee with the earlier initial state service hire date;
3. If a tie continues to exist, it shall be broken by lot.

F. Notice of separation due to temporary reduction in force. The agency shall provide the employee written notice as soon as the plan is approved. The notice shall include, at a minimum, the effective date of the action and the right to request a review of the action.

G. When funding necessary to pay the employee is restored, the temporary reduction in force expires, or the agency head otherwise determines that an employee may be recalled, the agency shall provide the employee written notice.

H. Employee request for review. An accelerated review process shall be established for temporary reduction in force. No later than 3 days after receipt of a temporary reduction in force notice, an employee may submit to the agency head a written request for a review of the determination resulting in the employee's temporary reduction in force and a proposed resolution. The agency head shall respond to the employee within 3 working days after receipt of the request. The request for review shall not delay or forestall implementation of the temporary reduction in force procedure.