

## NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

### NOTICE OF EXEMPT RULEMAKING

#### TITLE 2. ADMINISTRATION

#### CHAPTER 5. DEPARTMENT OF ADMINISTRATION - PERSONNEL ADMINISTRATION

#### PREAMBLE

1. **Sections Affected**

R2-5-902	<b><u>Rulemaking Action</u></b>
R2-5-902	Repeal
R2-5-904	New Section
R2-5-904	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 effective date of the rules:**

April 23, 1998
4. **A list of all previous notices appearing in the Register addressing the exempt rule:**

None
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Gordon Carrigan, Human Resources Generalist  
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6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed new section 902 is a temporary rulemaking that replaces the previous rule. It revises the previous procedures for conducting a reduction in force, including the bases for reduction, class status, type of employment, calculation of retention points, offer of position, and employee review requests. The reasons for the revisions include clarification, changes in employee performance appraisal procedures, changes in management practices, and the addition of a voluntary separation option. The new section 904 provides for severance pay for employees willing to volunteer for a reduction in force. These revisions are being made pursuant to Laws 1997, Ch. 288. The temporary rulemaking authority will expire June 30, 1999.
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 summary of the economic, small business, and consumer impact:**

The rules directly affect state service employees through layoff procedures that reduce salaries paid by the state. The result would have an economic impact by reducing spendable income and could impact consumers depending upon the level of services that are affected by the number of persons selected for reduction. The extent of the impact as measured in financial terms can not be projected due to the unknown reductions that could take place.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Not applicable.
10. **A summary of the principal comments and the agency response to them:**

Not applicable.
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.

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12. Incorporations by reference and their location in the rules:  
None.
13. Was this rule previously adopted as an emergency rule?  
Not applicable.
14. The full text of the rules follows:

**TITLE 2. ADMINISTRATION**

**CHAPTER 5. DEPARTMENT OF ADMINISTRATION - PERSONNEL ADMINISTRATION**

**ARTICLE 9. SEPARATIONS**

Section

R2-5-902.     Reduction in Force  
R2-5-904.     Voluntary Separation Program

**R2-5-902.     Reduction in force Repealed**

**A. General:**

1. An agency head shall request approval from the Director to conduct a reduction in force for any of the reasons set forth in A.R.S. § 41-783, paragraph (14), indicating the reason for the reduction, and the proposed geographic area and effective date of the reduction. Any personnel action which would have an effect on the reduction in force shall not be approved after the date of the agency head's request.
2. The request shall be submitted not less than 30 working days prior to the proposed effective date of the reduction in force. The Director shall respond within five working days. If circumstances beyond the agency's control do not permit at least 30 working days' notice, the agency shall provide notice as soon as it is aware of the necessity for a reduction in force.
3. If the reduction in force results from the abolition of a filled position, the agency may not re-establish the position for two years, unless the abolition of the position was due to fiscal constraints, legislative action, or court order.
4. When a program is abolished or an institution permanently terminates operation, so that the phasing out of operations occurs over a period of not less than three months, the Director, in consultation with the head of the agency, board, or commission considering reduction in force activity, shall develop and communicate to affected employees appropriate alternative reduction in force procedures to permit staggered phase out and transfer, reduction, or separation of personnel as appropriate.
5. Subject to work requirements, each agency head shall allow employees affected by a reduction in force to be released from work with pay to attend state job interviews.

**B. Administration.** Except as provided in subsection (A), paragraph (4) above, a reduction in force shall be administered by the Director in the following manner:

1. Employees other than permanent status employees in the class series affected by the reduction in force shall be separated in the order listed below before any reduction in force action is taken affecting permanent status employees, providing the separation of these employees will accomplish, or assist in accomplishing, the purpose of the reduction in force:
  - a. Emergency employees.
  - b. Provisional employees.
  - c. Clerical pool employees.
  - d. Temporary employees.
  - e. Seasonal employees.
  - f. Original probationary employees.
2. Retention points shall be used to identify permanent status employees for transfer, reduction, or separation based on the employee's relative standing on the retention list. Identification of employees to be considered first for transfer, reduction, or separation shall begin with the employee with the lowest number of retention points.
3. Retention points will be based upon length of state service and performance, calculated in accordance with the instructions in subsections (C), (D) and (E). Service in positions which became covered in accordance with Chapter 4, Title 41, A.R.S. (formerly Chapter 6, Title 38, A.R.S.), shall be considered state service.
4. Limited appointment employees shall compete for retention only against other limited appointment employees.
5. Employees on promotional probation or detail to special duty shall compete for retention only in the class in which permanent status is held.
6. A position which is underfilled shall be considered vacant at the allocated level.
7. Permanent part-time employees shall compete for retention only against other permanent part-time employees.

**C. Calculation of retention points for length of service.**

1. Each permanent status employee shall be awarded one retention point for each month of state service, provided the employee has been in a pay status for at least one-half of the employee's working days in that month.
2. Periods of service as a state service employee prior to a separation shall not be counted except when the separation was of less than two years' duration, and the separation was not the result of disciplinary action.
3. Periods of state service as a provisional, seasonal, temporary, limited, or clerical pool employee which are credited toward satisfying a subsequent original probationary requirement shall 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. Prior service in a position which is transferred 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, in the class permanently held by an employee, and concluded prior to the date of request for the reduction in force, shall be used in determining retention points. Any grievance on the most recent performance evaluation shall be resolved by the agency head prior to computing retention points. If an employee has not had a performance evaluation in the past 12 months, the employee shall

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evaluation shall be resolved by the agency head prior to computing retention points. If an 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 a current overall performance evaluation of "Outstanding" shall be awarded 36 retention points.
2. Each employee having a current overall performance evaluation of "Exceeded Results Expected" shall be awarded 24 retention points.
3. Each employee having a current overall performance evaluation of "Achieved Results Expected" shall be awarded 12 retention points.
4. Each employee having a current overall performance evaluation of "Needs Improvement" shall have twelve retention points subtracted from the total.
5. Each employee having a current overall performance evaluation of "Unsatisfactory" shall not be awarded any retention points, and the employee shall be placed at the bottom of retention lists.

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

1. Employees shall be awarded one point for each full calendar month of state service in a pay status in the class affected by the reduction in force.
2. If a tie continues to exist, the tie shall be broken by the employee with the highest overall performance evaluation in the class permanently held by the employee.
3. If a tie continues to exist, the tie shall be broken by the employee with the earlier state service hire date.
4. If a tie continues to exist, it shall be broken by lot.

**F. Offer of position:**

1. Provided the employee possesses the required minimum qualifications for the class, an employee who is identified for transfer or reduction shall be made the single best offer, in terms of pay grade, within the agency of:
  - a. A position at the same pay grade or lower in the same class series as the employee's present permanent status position; or
  - b. A position at the same pay grade or lower in a class series in which the employee has previously held permanent status. If that position is in a class which has been retitled or regraded without a major change in duties, that position may be offered to the employee.
  - c. If an employee can be made equal offers under the provisions of subparagraphs (a) and (b) above, the position covered by subparagraph (a) will be offered.
2. In lieu of accepting a permanent position at a lower grade, an employee shall be given the option of accepting:
  - a. A vacant position at the employee's present pay grade for which the employee meets the minimum qualifications in a class series in which the employee has never held permanent status; or
  - b. A limited, seasonal, temporary, clerical pool, or part-time position at the employee's present pay grade for which the employee meets the minimum qualifications.
3. Employees must meet the required minimum qualifications and job related selective requirements, if any, to be considered for a position. These selective requirements

shall normally have been required when the position was last filled:

4. The agency shall give written notice at least 15 working days in advance to each employee to be transferred, reduced, or separated. If circumstances beyond the agency's control do not permit at least 15 working days' notice, the agency shall provide notice as soon as it is aware of the necessity to transfer, reduce, or separate the employee.
5. The notice shall include, as a minimum, the reason for and effective date of the action, the job offer, if any, to include the salary, location of the position, and supervisor's name, the availability of reduction in force procedures and records for review, the employee's right to request a review of the action, and the employee's reemployment rights, if applicable. Any job offer shall contain a time limitation of not less than five working days in which the employee may accept the offer. Failure of an employee to reply in writing within the stated time limitation, or failure to accept a job offer, shall constitute a resignation.

**G. Employee request for review:**

1. Within five days of receipt of a reduction in force notice, an employee may submit in writing a request to the agency head for a review of the procedure resulting in the employee's transfer, reduction, or separation due to a reduction in force. The request must contain specific information concerning the error involved and a proposed resolution of the problem. The agency head shall review the request and respond to the employee within five working days after receipt of the request.
2. An employee who wishes further review may submit a written request to the Director within five working days after receipt of the agency head's response. The Director shall investigate and respond to the employee and the agency head with the final decision on the review within five working days of receipt of the employee's request.
3. The Director may postpone any portion of the reduction in force until the review requested by the employee has been completed.

**R2-5-902. Reduction in force**

**A. General.**

1. An agency head shall submit to the Director a proposal to conduct a reduction in force when personnel reductions are required by reason of:
  - a. lack of monies or work;
  - b. abolition of one or more positions;
  - c. a material change in the duties or organization;
  - d. the introduction of cost reduction initiatives; or
  - e. no need by a receiving agency for the position or positions transferred.
2. A reduction in force may be limited to a single agency. A reduction in force may be limited to an organizational unit of an agency and/or agency operations within a geographic area.
3. The agency head shall submit the agency proposal for a reduction in force not less than 30 working days prior to the intended effective date of the proposed reduction in force. The proposal shall indicate the reason for the reduction, the proposed organizational unit and/or the geographic area if applicable, and the effective date of the reduction.
4. When a program is abolished or an institution permanently terminates operation, so that the phasing out of operations occurs over a period of not less than 3

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months, the head of the agency, board, or commission considering reduction in force activity, shall develop and communicate to affected employees the agency's voluntary separation program plan and appropriate alternative reduction in force procedures to permit staggered phase-out and transfer, reduction, or separation of personnel as appropriate.

5. The agency shall submit a proposal for a voluntary separation program at the same time the agency head submits the reduction in force proposal to the Director.
6. The agency proposal shall be consistent with the provisions of Arizona Revised Statutes § 41-763.03 and § 41-763.04 and these rules.
7. An employee with permanent status who has been separated as a result of a reduction in force is entitled, upon written application, to be considered for reemployment in the class held at the time of separation due to the reduction in force. The employee shall be given 1st consideration for positions in the class based upon prior seniority and performance for one year from the date of separation.

**B. Administration.**

The Director shall review and approve or modify the proposal submitted by an agency head within 20 working days of receipt.

Except as provided in A.4., a reduction in force shall be administered by the Director in the following manner:

1. Employees other than permanent status employees in the class affected by the reduction in force shall be separated in the following order before any reduction in force action is taken affecting permanent status employees:
  - a. Provisional employees;
  - b. Clerical pool employees;
  - c. Temporary employees;
  - d. Seasonal employees;
  - e. Original probationary limited employees;
  - f. Original probationary employees;
  - g. Limited appointment employees.
2. Retention points shall be used to identify permanent status employees within the class series affected by the reduction in force for transfer, reduction, or separation based on the employee's relative standing on the retention list.
3. Retention points will be based upon length of state service and performance, calculated in accordance with the instructions in (C), (D) and (E). Service in positions which became covered in accordance with Chapter 4, Title 41, A.R.S. (formerly Chapter 6, Title 38, A.R.S.), shall be considered state service.
4. Employees on promotional probation or detail to special duty shall compete for retention only in the class series in which permanent status is held.
5. Employees in an underfill position shall compete for retention only in the class series in which permanent status is held.
6. Permanent part-time employees in the class series affected by the reduction in force shall compete for retention only against other permanent part-time employees in the same class series.

**C. Calculation of retention points for length of service.**

1. Each permanent status employee shall be awarded 1 retention point for each credited month of service as a state service employee in the current class series up to 60 months prior to the reduction in force implementation date. In order to receive credit, the employee must

have been in a pay status for at least 1/2 of the employee's working days in that month.

2. Periods of service as a state service employee prior to a separation shall not be counted except when the separation was of less than 2 years' duration, and the separation was not the result of disciplinary action.
  3. Periods of state service as a provisional, seasonal, temporary, limited, or clerical pool employee which are credited toward satisfying a subsequent original probationary requirement shall 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 which is transferred to state service by legislative action or otherwise from a budget unit of the state shall be counted.
  7. Periods of Family and Medical Leave Act leave with or without pay shall be counted.
- D. Calculation of retention points for performance.** The average of the scores of the 3 or less most recent performance evaluations in the 24 months concluded prior to the date of request for the reduction in force shall be used in determining retention points. Any grievance on the most recent performance evaluation shall be resolved by the agency head prior to computing retention points. An agency using an approved alternate employee performance evaluation system shall convert the performance evaluation scores of affected employees to the 8-point scale established by the Director prior to the calculation of retention points. If an employee has not had a performance evaluation in the past 24 months, the employee shall be awarded 30 retention points. Retention points for performance shall be awarded as follows:
1. Each employee having an average performance evaluation score of "8" shall be awarded 60 retention points.
  2. Each employee having an average performance evaluation score of "7" but less than "8" shall be awarded 48 retention points.
  3. Each employee having an average performance evaluation score of "6" but less than "7" shall be awarded 36 retention points.
  4. Each employee having an average performance evaluation score of "5" but less than "6" shall be awarded 24 retention points.
  5. Each employee having an average performance evaluation score of "4" but less than "5" shall be awarded 12 retention points.
  6. Each employee having an average performance evaluation score of "3" but less than "4" shall be awarded 1 retention point.
  7. Each employee having an average performance evaluation score of less than "3" shall be awarded 0 retention points, and the employee shall be placed at the bottom of retention lists.
- E. Resolution of ties.** Ties in total retention points shall be broken in the following manner and order:
1. The tie shall be broken by the employee with the highest average performance evaluation during the past 24 months.
  2. If a tie continues to exist, employees shall be awarded 1 point for:
    - a. each full calendar month of state service in pay status in the class affected by the reduction in force;
    - b. periods of state service as a provisional, seasonal, temporary, limited, or clerical pool employee

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- which are credited toward satisfying a subsequent original probationary requirement;
- c. periods of military leave with or without pay;
  - d. periods of service on mobility assignment;
  - e. continuous uninterrupted service in a position which is transferred to state service by legislative action or otherwise from a budget unit of the state; and
  - f. periods of Family and Medical Leave Act leave with or without pay.
3. If a tie continues to exist, the tie shall be broken by the employee with the earlier state service hire date of record.
4. If a tie continues to exist, it shall be broken by lot.
- F. Offer of position. Position offers shall be made to employees in the descending order of their standing on the retention point list from high to low as follows:
- 1. Retention in the current position.
  - 2. Provided a vacant position exists and the employee possesses the required minimum qualifications for the class, an employee who is identified for transfer, reduction, or separation shall be made the single best offer, in terms of pay grade, within the agency of:
    - a. A vacant position at the same pay grade or lower in the same class series as the employee's present permanent status position; or
    - b. A vacant position at the same pay grade or lower in the class series in which the employee has previously held permanent status during the past 5 years; or
    - c. If an employee can be made equal offers under the provisions of (a) and (b), the position covered by (a).
  - 3. Employees must possess the knowledge, abilities, and skills requirements of the position in order to be considered for that position. These requirements shall have been required when the position was last filled, unless the Director grants an exception.
  - 4. The agency shall give written notice at least 5 working days in advance to each employee to be transferred, reduced, or separated. If circumstances beyond the agency's control do not permit at least 5 working days' notice, the agency shall provide notice as soon as it is aware of the necessity to transfer, reduce, or separate the employee.
  - 5. The notice shall include, as a minimum, the reason for and effective date of the action, the job offer, if any, to include the salary, location of the position, and supervisor's name, the availability of reduction in force procedures and records for review, the employee's right to request a review of the action, and the employee's reemployment rights, if applicable. Any job offer shall contain a time limitation of not less than 3 working days in which the employee may accept the offer. Failure of an employee to reply in writing within the stated time limitation, or failure to accept a job offer, shall constitute a resignation. An employee may accept a job offer and retain the right to request a review of the reduction in force.
  - 6. If no vacant positions exist, the employee shall be separated without prejudice.
- G. Employee request for review.
- 1. Within 3 working days of receipt of a reduction in force notice, unless a longer time period is authorized by the Director, an employee may submit in writing a request

to the agency head for a review of the procedure resulting in the employee's transfer, reduction, or separation due to a reduction in force. The request must be based upon an error and must contain specific information concerning the error involved and a proposed resolution of the problem. The agency head shall review the request and respond to the employee within 5 working days after receipt of the request.

- 2. The Director may postpone any portion of the reduction in force until the review requested by the employee has been completed.

**H. Duration.**

This rule is temporary pursuant to Laws 1997 Chapter 288 and shall expire June 30, 1999.

**R2-5-904. Voluntary Separation Program**

**A. General.**

- 1. An agency head shall submit to the Director a proposal for a voluntary separation program for permanent status employees when a reduction in force is to be initiated. The proposal and the agency procedures shall include:
  - a. the job classification and position number of each position designated for reduction in force;
  - b. the name, Social Security number, current rate of pay, job classification, and position number of permanent status employees eligible for the voluntary separation program, i.e., permanent status employees in a position scheduled for elimination due to a reduction in force or holding permanent status in the same class in the agency as a position that is scheduled for elimination due to a reduction in force;
  - c. the number of funded, vacant positions within the agency by job classification, and what efforts the agency has made to place employees designated for reduction in force in other positions within the agency or other state agencies;
  - d. expected outcome of the voluntary separation program;
  - e. an available funding statement;
  - f. the duration of the program;
  - g. the benefits to be provided to each voluntarily separated employee; and
  - h. the agency reduction in force procedures which shall include as a minimum:
    - i. notification to each employee eligible for the program within 5 working days of the agency's receipt of the Director's approval advising the employee of eligibility to participate in the program and providing a copy of the entire voluntary separation program information about employee eligibility, program duration, severance pay calculation, length of shared insurance premiums extension, method of payment, and program procedures;
    - ii. a method of selecting volunteers for separation when more than 1 employee is eligible that includes a review process in which the agency head's decision is final;
    - iii. a specified time for employees to consider and accept the voluntary separation severance pay and shared insurance premium payments; and
    - iv. a requirement that eligible employees who volunteer for separation sign a written agreement that outlines the separation date, amount of payment, length of shared insurance pre-

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- mium payments, exceptions, method of payment, and information pertinent to any return to work in state service or employment with a contractor who provides services to the state.
2. The voluntary separation program shall be offered to all eligible employees and shall provide, subject to funding availability, severance pay in the amount of 1 week of pay for each year of service, prorated for service in increments of less than 1 year, and eligibility to continue enrollment in health, dental and life insurance programs for up to 6 months after separation provided the employee pays the employee contribution.
  3. A permanent status employee in a position scheduled for elimination due to a reduction in force or holding permanent status in the same class in the same agency as a position that is scheduled for elimination due to a reduction in force may volunteer for separation and shall receive compensation as provided by the approved voluntary separation program.
  4. The agency head shall submit the agency proposal for the voluntary separation plan not less than 30 working days prior to the intended effective date of the proposed reduction in force.
5. The agency proposal shall be consistent with the provisions of Arizona Revised Statutes § 41-763.03 and these rules.
    - B. Administration.  
The Director shall review and approve or modify the proposed voluntary separation program submitted by an agency head within 20 working days of receipt.
    - C. Exceptions.  
The Director may offer shorter terms of shared insurance premium payments if funding is not available. The agency head may offer lesser amounts of severance pay if sufficient funding is not available. The program shall not offer shared insurance premium payments to an employee who retires or accepts employment that offers an employer sponsored insurance program.
    - D. Repayment.  
An employee shall repay to the state any monies paid to the employee as a result of participation in the voluntary separation program if the employee returns to state service or applies for retirement or early retirement within 6 months of the employee's voluntary separation participation date.
    - E. Duration.  
This rule is temporary pursuant to Laws 1997 Chapter 288 and shall expire June 30, 1999.