

NOTICES OF PROPOSED RULEMAKING

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

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

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION - PERSONNEL ADMINISTRATION

PREAMBLE

1.

<u>Section Affected</u> R2-5-307	<u>Rulemaking Action</u> Repeal
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2. 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. § 41-763
Implementing Statute: A.R.S. § 41-783
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 104
Phoenix, Arizona 85007
Telephone: (602) 542-4784
Fax: (602) 542-2796
4. An explanation of the rule, including the agency's reasons for initiating the rule:
The proposed rulemaking repeals the rule that authorizes an agency head to establish an agency on-call policy and to certify the eligible classes, as prescribed by rule, to receive an hourly rate of pay to "be available to answer calls and/or report to work" via telephone, beeper or other notification method in specified situations when the employee is not scheduled to work. The Director of the Department of Administration is responsible for determining the hourly rate of pay. The rule, as written, grants agency heads discretionary authority to establish an on-call policy and implement the policy subject to agency funding availability. This on-call policy is not required by federal or state law. This on-call policy has allowed for inequitable application between agencies and numerous administration difficulties, such as:
 - (1) employees claiming and supervisors approving on-call pay for every hour the employee is not working;
 - (2) agency use of the on-call provisions without an approved policy and/or authorization for the position/class;
 - (3) employees claiming they were on on-call duty because they carry a beeper;
 - (4) agency approval of on-call pay for employees assigned to ineligible classes, including employees in non-State Service Merit System positions;
 - (5) the state's lack of ability system-wide to track actual times contacted and/or call-in to work while in on-call status; and
 - (6) use of the rule by some agencies to benefit people financially in exact opposition to the intent of the rule.In its current form, it is believed that this rule exposes the state to liability. No replacement rule is being promulgated in conjunction with the repeal.
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.

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6. **The preliminary summary of the economic, small business, and consumer impact:**
The proposed rulemaking will affect only State Service employees who have been on the on-call list at their agencies, and it will not have an impact on small businesses and consumers. The effect will be less extra weekly income per person involved and, therefore, less tax revenue for the state, although this effect may be offset by some increase in overtime or compensatory time.
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) 542-2796
8. **The time, place, and nature of the proceedings for the adoption of the 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 rule. Requests must be submitted by no later than 5 p.m., April 13, 1998, to the following person:
Name: Gordon Carrigan, Human Resources Generalist
Address: Department of Administration
1831 West Jefferson, Room 104
Phoenix, Arizona 85007
Telephone: (602) 542-4784
Fax: (602) 542-2796
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.
10. **Incorporation 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 3. CLASSIFICATION AND COMPENSATION

Section
R2-5-307. On-call Duty

ARTICLE 3. CLASSIFICATION AND COMPENSATION

R2-5-307. On-call Duty

- ~~A. Authority. An agency head may assign an employee to on-call duty when the agency head considers such action to be in the best interests of the state.~~
- ~~1. The agency head may request that a classification be approved by the Director as eligible for on-call duty pay subject to the availability of funds.~~
- ~~2. The agency head shall certify that the functions or services performed by the positions within the class assigned to on-call duty require an employee to be available to answer calls and/or report to work to protect the public health, safety or welfare or in emergency situations via telephone, beeper or other notification method at a time when the employee is not scheduled to work.~~
- ~~B. Rate of Pay. The rate of pay for on-call duty shall be determined by the Director.~~
- ~~C. Pay Administration~~
- ~~1. Once a class has been approved as eligible for on-call duty pay, payment begins when a person is required to be available to answer calls and/or report to work. On-~~

~~call duty pay is terminated in accordance with the standards set forth in paragraph (2)(a) and (b) below and shall resume upon completion of the work assignment if returning to on-call status.~~

- ~~2. Upon reporting to work as a result of a call to duty, an employee shall be paid at the regular rate of pay if the employee has worked fewer than 40 hours during the normal work week. If the employee has worked 40 hours during the normal work week, the employee shall receive, as appropriate, cash payment or compensatory leave in accordance with R2-5-305 if the employee's position is eligible for such overtime compensation.~~
- ~~a. Regular rate of pay will begin at the time the employee reports to the regular work site and will continue through completion of the work assignment.~~
- ~~b. If the employee is ordered to report to a location other than the regular work site, regular rate of pay will begin at the time the employee is ordered to report to work and will continue through completion of the work assignment and a reasonable return transit time.~~
- ~~c. If the employee conducts business via telephone, etc., without reporting to a work site, regular rate of pay will begin at the time the employee begins the~~

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~~work assignment and will continue through completion of the work assignment.~~

- ~~3. Time on call shall not be used to determine eligibility for overtime compensation.~~

~~D. Agency procedures. An agency that places employees on call shall adopt an on call duty procedure pursuant to this rule. Each agency will submit its proposed on call duty procedure and any subsequent changes to the Director for approval. The procedure shall include as a minimum:~~

- ~~1. Methods of scheduling employees for on call assignments;~~

- ~~2. Notification procedures, including use of pagers;~~

- ~~3. Overtime compensation criteria;~~

- ~~4. Requirement that any on call duty pay shall be reported and paid together with other earnings in the pay period for which it is earned.~~