

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first 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. 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 making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 2. ADMINISTRATION

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

*Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2010-13 as issued by Governor Brewer. (See the text of the executive order at 16 A.A.R. 1183, July 2, 2010.) The Governor's Office authorized the notice to proceed through the rulemaking process on July 2, 2010.*

[R10-107]

#### PREAMBLE

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R2-5-902                           | Amend                           |
| R2-5-904                           | Repeal                          |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. § 41-763(2) and (6)  
Implementing statute: A.R.S. § 41-763.04
- 3. A list of all previous notices appearing in the *Register* addressing the proposed rules:**  
Notice of Rulemaking Docket Opening: 16 A.A.R. 1471, August 6, 2010 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Christine Bronson, Manager, Employee Relations Section  
Address: Department of Administration  
100 N. 15th Ave., Suite 261  
Phoenix, AZ 85007  
Telephone: (602) 542-1423  
Fax: (602) 542-1980  
E-mail: Christine.Bronson@azdoa.gov
- 5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:**  
Laws 2010, 7th Special Session, Ch. 3, repealed Arizona Revised Statutes (A.R.S.) § 41-763.03, voluntary separation program, thus, R2-5-904, Voluntary Separation Program, is being repealed. R2-5-902, Reduction in Force, is being amended to eliminate references to A.R.S. § 41-763.03, R2-5-904, and the term "voluntary separation program," which appear in the text of the Reduction in Force rule.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
The agency did not review any study and does not propose to rely on or not rely on any study for this rulemaking.
- 7. 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

Notices of Proposed Rulemaking

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

The proposed rulemaking affects only state service agencies and employees and will not have an impact on small businesses and consumers.

The proposed rulemaking is necessary because the statute providing the authority for the voluntary separation program has been repealed. The only costs the Department will incur are those costs associated with the rulemaking process.

**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: Christine Bronson, Manager, Employee Relations Section  
Address: Department of Administration  
100 N. 15th Ave., Suite 261  
Phoenix, AZ 85007  
Telephone: (602) 542-1423  
Fax: (602) 542-1980  
E-mail: Christine.Bronson@azdoa.gov

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

An oral proceeding regarding the proposed rules will be held as follows:

Date: September 8, 2010  
Time: 2:00 p.m.  
Location: Department of Administration  
100 N. 15th Ave., Room 304  
Phoenix, AZ 85007

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

None

**12. Any material incorporated by reference and its location in the rules:**

None

**13. 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~~ Repealed

ARTICLE 9. SEPARATIONS

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

- A. No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
    - f. No change
  - 2. No change
  - 3. No change

- a. No change
- b. No change
  - i. No change
  - ii. No change
  - iii. No change
- c. No change
- d. No change
- 4. ~~An agency head shall submit a proposal for a voluntary separation program in accordance with R2-5-904 at the same time the agency head submits a reduction in force proposal to the Director.~~
- ~~5-4.~~ An agency head shall submit a proposal that is consistent with A.R.S. §§ ~~41-763.03 and~~ § 41-763.04; and this Section; ~~and R2-5-904.~~
- ~~6-5.~~ An agency head shall not approve a personnel action that would have an effect on the reduction in force after the agency head has submitted a proposal for a reduction in force.
- ~~7-6.~~ An agency head shall not re-establish a position that was abolished as a result of a reduction in force for two years if the position was filled when the reduction in force occurred, unless the position was abolished due to fiscal constraints, legislative action, or court order.
- ~~8-7.~~ A permanent status employee separated as a result of a reduction in force is entitled, upon written application, to be considered for reemployment in the class held immediately prior to the separation and for all classes at the same or lower grade for which the former employee is qualified as provided in Article 2 of these rules. The employee shall be given first consideration for reemployment in the agency from which the employee was separated based upon prior seniority and performance.
- ~~9-8.~~ A permanent status employee reduced in pay grade as a result of a reduction in force is entitled, upon written application, to be considered for repromotion to the class held immediately prior to the reduction in force or any intervening class as provided in Article 2 of these rules.
- B.** No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
    - f. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
- C.** No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
  - 7. No change
- D.** No change
  - 1. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
  - 3. No change
    - a. No change
    - b. No change
- E.** No change
  - 1. No change
  - 2. No change

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- 3. No change
- 4. No change
- F. No change
  - 1. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
  - 3. No change
    - a. No change
      - i. No change
      - ii. No change
      - iii. No change
    - b. No change
      - i. No change
      - ii. No change
  - 4. No change
  - 5. No change
  - 6. No change
- G. No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
  - 2. No change
  - 3. No change
  - 4. No change

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

**A. General:**

- 1. ~~An agency head shall submit to the Director a proposal for a voluntary separation program for a permanent status employee when submitting a proposal for a reduction in force. The program 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:~~
    - i. ~~A permanent status employee in a position scheduled for elimination due to a reduction in force; or~~
    - ii. ~~A permanent status employee in the same class and same designated area of the agency as a position scheduled for elimination due to a reduction in force;~~
  - e. ~~The number of funded, vacant positions within the agency by job classification;~~
  - d. ~~The efforts the agency has made to place employees designated for reduction in force in other positions in the same pay grade within the agency or other state agencies;~~
  - e. ~~The expected outcome of the voluntary separation program;~~
  - f. ~~An available funding statement;~~
  - g. ~~The expected duration of the voluntary separation program;~~
  - h. ~~The benefits the agency plans to provide to each voluntarily separated employee; and~~
  - i. ~~The procedures the agency plans to use to effect the voluntary separation program. These procedures shall include at a minimum:~~
    - i. ~~An agency head's notification to an employee of eligibility to participate in the voluntary separation program within five working days of the agency's receipt of the Director's approval and a copy of the 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 among volunteers for separation when more than one employee is eligible that includes a review process in which the agency head's decision is final;~~
    - iii. ~~A specified time for an employee to consider and accept the voluntary separation severance pay and shared insurance premium payments; and~~
    - iv. ~~A requirement that an eligible employee who volunteers for separation sign a written agreement that the employee agrees to the voluntary separation and that outlines the separation date, amount of payment, length of shared insurance premium payments, exceptions to severance and insurance, 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. ~~An agency shall offer a voluntary separation program to all eligible employees and shall provide, subject to funding availability, severance pay in the amount of one week of pay at current base salary for each year of service, prorated for service in increments of less than one year, and eligibility to continue enrollment in health, dental, and life insurance programs for up to six months after separation if the employee pays the employee contribution.~~
3. ~~A permanent status employee in a position or class in an organizational unit or agency operations within a geographic area that is scheduled for elimination due to a reduction in force, or an employee who holds permanent status in the same class in the same designated area of the agency may volunteer for separation and shall receive compensation as provided by the approved voluntary separation program.~~
4. ~~An agency head shall submit the agency proposal for the voluntary separation program at least 30 working days before the intended effective date of the proposed reduction in force. 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.~~
5. ~~An agency proposal shall be consistent with A.R.S. § 41-763.03 and this Section.~~
- B.** ~~Administration. Within 20 working days of receipt, the Director shall review and approve or modify an agency's proposed voluntary separation program.~~
- C.** ~~Exceptions. An agency head may offer shorter terms of shared insurance premium payments if funding is not available. An agency head may offer lesser amounts of severance pay if sufficient funds are not available. The program shall not offer shared insurance premium payments to an employee who retires or accepts other employment that offers an employer sponsored insurance program.~~
- D.** ~~Repayment. An employee shall repay the state any money 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 six months of the employee's voluntary separation date.~~

## NOTICE OF PROPOSED RULEMAKING

### TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

#### CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

*Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 4, 2010.*

[R10-84]

#### PREAMBLE

- |   |   |
|---|---|
| <b>1. <u>Sections Affected</u></b>  | <b><u>Rulemaking Action</u></b>   |
| R20-5-602   | Amend   |
| <b>2. <u>The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u></b> |   |
| Authorizing statute: A.R.S. § 23-405(4)   |   |
| Implementing statute: A.R.S. § 23-410   |   |
| <b>3. <u>A list of all previous notices appearing in the Register addressing the proposed rule:</u></b>   |   |
| Notice of Final Rulemaking: 16 A.A.R. 1469, August 6, 2010 ( <i>in this issue</i> )   |   |
| Notice of Rulemaking Docket Opening: 16 A.A.R. 880, May 28, 2010  |   |
| <b>4. <u>The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u></b>   |   |
| Name:   | William M. Wright   |
| Address:  | Division of Occupational Safety and Health<br>Industrial Commission of Arizona<br>800 W. Washington St., Suite 203<br>Phoenix, AZ 85007 |
| Telephone:  | (602) 542-1695  |
| Fax:  | (602) 542-1614  |

Notices of Proposed Rulemaking

E-mail: wright.william.m@dol.gov

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

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, the Industrial Commission is amending R20-5-602, incorporating by reference, amendments to 29 CFR 1910 Subpart H, as published in *Federal Register* 74 FR 40450-40455, August 11, 2009, and became a final order when published in the *Federal Register* 74 FR 57883-57884, November 10, 2009. This incorporation by reference replaces the reference to the 1966 edition of the Compressed Gas Association, Inc. Pamphlet G-1 for Acetylene with the CGA-1-2003 edition. The changes between the 1966 and the 2003 edition are for the most part adding language for guidance of proper storage and transportation of acetylene cylinders, identifying appropriate discharge flow rates from cylinders, avoidance for potential of damage to small cylinder valves and appropriate handling of leaking acetylene tanks. The 2003 edition has been written in plain language for better understanding of the requirements of this subpart.

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**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:**

The Federal Occupational Safety and Health Administration have determined these amendments do not impose significant additional cost on any private or public sector entity, and do not meet any criteria for an economically significant or major rule specified by Executive Order 12866 and the relevant statutes. The direct final rule simply updates references to outdated standards in OSHA's Acetylene Standards. OSHA concludes that the revisions will not impose any additional costs on employers (large or small) because it believes the updated standards represent the usual and customary practice of employers in industry.

**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: William M. Wright  
Address: Division of Occupational Safety and Health  
Industrial Commission of Arizona  
800 W. Washington St., Suite 203  
Phoenix, AZ 85007  
Telephone: (602) 542-1695  
Fax: (602) 542-1614  
E-mail: wright.william.m@dol.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:**

An oral proceeding has been scheduled as follows:

Date: September 9, 2010  
Time: 9:00 a.m.  
Location: Hearing Room A, First Floor  
Industrial Commission of Arizona  
800 W. Washington St.  
Phoenix, AZ 85007

The close of record is Thursday September 9, 2010, 5:00 p.m. A person may also submit written comments on the proposed rules no later than 5:00 p.m. Thursday September 9, 2010, to the individual listed in items 4 and 9.

**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:**

29 CFR 1910 The Federal Occupational Safety and Health Standards for General Industry, with amendments as of November 10, 2009. This incorporation by reference will appear in R20-5-602.

**13. The full text of the rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

Section

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

**R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910**

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of ~~September 9, 2009~~, November 10, 2009, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~September 9, 2009~~, November 10, 2009.