

# NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

## NOTICE OF FINAL RULEMAKING

### TITLE 2. ADMINISTRATION

#### CHAPTER 1. DEPARTMENT OF ADMINISTRATION

*Editor's Note: The following Notice of Final 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.*

[R11-19]

#### PREAMBLE

**1. Sections Affected**

R2-1-601  
R2-1-602  
R2-1-603  
R2-1-603  
R2-1-604  
R2-1-605

**Rulemaking Action**

Amend  
Amend  
Repeal  
New Section  
Repeal  
Repeal

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

Authorizing statutes: A.R.S. §§ 41-703 and 41-796.01  
Implementing statute: A.R.S. § 41-796.01

**3. The effective date of the rules:**

April 30, 2011

**4. A list of all previous notices appearing in the *Register* addressing the final rules:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 1752, May 9, 2008 (*Expired*)  
Notice of Rulemaking Docket Opening: 16 A.A.R. 1766, September 3, 2010  
Notice of Proposed Rulemaking: 16 A.A.R. 1906, September 24, 2010  
Notice of Public Information: 16 A.A.R. 2065, October 22, 2010

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Melvin G. Brender, Employee Relations Section

Address: ADOA Human Resources  
100 N. 15th Ave., Suite 261  
Phoenix, AZ 85007

Telephone: (602) 542-0544

Fax: (602) 542-1980

E-mail: Mel.Brender@azdoa.gov

or

Name: Kayelen Rolfe, Manager, Travel Reduction Programs

Address: ADOA Human Resources  
100 N. 15th Ave., Suite 261  
Phoenix, AZ 85007

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Telephone: (602) 542-3638  
Fax: (602) 542-3636  
E-mail: Kayelen.Rolfe@azdoa.gov

**6. An explanation of the rules, including the agency's reasons for initiating the rules:**

This rulemaking is a result of the Department's Five-year Review Report approved by the Governor's Regulatory Review Council (G.R.R.C.) in 2006. The rulemaking will allow compliance data on adjusted work hours for state employees to be collected through the state's annual travel reduction survey rather than collected in a separate report. In addition, the definitions are amended and updated to proper form and to reflect current practice. Sections allowing agencies to request an exemption to the adjusted work hours requirement are repealed because the requirement for each agency to submit an adjusted work hours plan was repealed.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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 utilize a study for evaluating or justifying the rulemaking.

**8. 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

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

Adoption of this rulemaking will result in cost savings to the state. The compliance data is already being collected and is the same information that is available annually from the mandatory travel reduction survey that is distributed to all state employees. The Department of Administration and all other state agencies bear the costs for the administration of this program. The only costs involve staff time associated with preparing and reviewing the collected survey data in addition to publishing these rules. The public will continue to benefit from less congested roadways and lower levels of pollution.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Not applicable

**11. A summary of the comments made regarding the rules and the agency response to them:**

An oral proceeding on the Notice of Proposed Rulemaking published September 24, 2010, was held on November 3, 2010. No one appeared to speak and no comments were received at the oral proceeding.

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

None

**13. Incorporations by reference and their location in the rules:**

None

**14. Were these rules previously made as emergency rules?**

No

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

TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

ARTICLE 6. ADJUSTED WORK HOURS

Section

R2-1-601. Definitions  
R2-1-602. Requirements  
R2-1-603. ~~Reporting~~ Monitoring  
R2-1-604. ~~Exemption~~ Repealed  
R2-1-605. ~~Response from Director~~ Repealed

ARTICLE 6. ADJUSTED WORK HOURS

**R2-1-601. Definitions**

In this rule ~~rule~~ Article, unless the context otherwise requires:

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1. "Agency head" means the head of each department, agency, board and commission of this state.
2. "Area A" has the same meaning in A.R.S. § 49-541(1).
3. "Area B" has the same meaning in A.R.S. § 49-541(2).
- ~~2-4.~~ "Director" means the Director of the Department of Administration- or the Director's designee.
- ~~3-5.~~ "Employee" means ~~a state employee or individual that has a legal employment agreement with the state~~ any person elected or appointed to a state position, or employed on a part-time or full-time basis by a department, agency, board, or commission of this state.
4. "Non-attainment area" means the metropolitan Phoenix area within Maricopa County or the metropolitan Tucson area within Pima County.
- ~~5-6.~~ "Reporting period Period" means October 1 through the following April 1.
7. "Travel Reduction Survey Data" means information collected pursuant to A.R.S. § 49-588, Pima County Ordinance 1988-72, and Pinal County Ordinance 121300-AQ1.

**R2-1-602. Requirements**

- A. During the reporting period, each agency head shall ~~require~~ provide work schedule options so that a minimum of 85% of its employees whose offices are located in a ~~nonattainment area~~ Area A or Area B ~~to comply with~~ are on adjusted work hours to reduce carbon monoxide concentration levels caused by vehicular travel. ~~These adjusted work hours may be continued during the April 2 through September 30 nonreporting period. Acceptable adjusted~~ Adjusted work hours are schedules that:
1. ~~Schedules that begin~~ Begin the workday on or before 7:30 a.m., or on or after 8:30 a.m., and conclude the workday on or before 4:30 p.m., or on or after 5:30 p.m. ~~In Maricopa County, schedules beginning on or before 7:30 a.m. and concluding on or before 4:30 p.m. have a greater air quality benefit than schedules beginning on or after 8:30 a.m. and concluding on or after 5:30 p.m.;~~
  2. ~~Schedules that adjust~~ Adjust work hours into a ~~4-day~~ four-day, 40-hour work week. Employees shall avoid a workday that begins between 7:30 a.m. and 8:30 a.m. or concludes between 4:30 p.m. and 5:30 p.m., whenever possible; or
  3. ~~Schedules that allow~~ Allow the employee to telework, commute by public transit, carpool, vanpool, bicycling, or walking. Employees who carpool or vanpool shall avoid a workday that begins between 7:30 a.m. and 8:30 a.m., or concludes between 4:30 p.m. and 5:30 p.m., whenever possible.
  4. ~~Other schedules that can be shown to reduce carbon monoxide concentration levels. These alternative work schedules shall be documented in the August 1 plan for consideration, pursuant to R2-1-603(A). The Director shall confer with the Department of Environmental Quality to determine if these schedules are applicable.~~
- B. Notwithstanding the requirements of subsection (A), each agency shall comply with A.R.S. § 38-401 requiring state offices to be open from 8:00 a.m. until 5:00 p.m. and A.A.C. R2-6-203 requiring that capitol buildings shall be open from 7:30 a.m. until 5:30 p.m.

**R2-1-603. Reporting Monitoring**

- A. On or before August 1 each year, each agency head with employees in a nonattainment area shall submit a plan for the following reporting period. This plan shall include the following:
1. The name and signature of the agency head and the name of the agency;
  2. The total number of employees whose offices are located in the nonattainment areas, by county;
  3. The total number of employees whose offices are located in the nonattainment areas, by county, that shall be completing their work schedules in compliance with R2-1-602(A). The plan shall include a subtotal count for each paragraph listed under R2-1-602(A);
  4. A description of other schedules as described in R2-1-602(A)(4);
  5. Any suggestions identifying areas that may be improved by the agency for it to better comply with R2-1-602;
  6. An exemption, if needed, pursuant to R2-1-604.
- B. On or before May 1 each year, each agency head with employees in a nonattainment area shall submit to the Director a summary report for the previous reporting period. The report shall include the following:
1. The name and signature of the agency head and the name of the agency;
  2. A copy of the original plan;
  3. An explanation of any differences between the original plan and its actual implementation.

The Director shall utilize existing travel reduction survey data to determine the percentage of employee work schedules that are in compliance with R2-1-602(A).

**R2-1-604. Exemption Repealed**

The agency head may submit a request to the Director for an exemption from the requirements of R2-1-602(A) to the extent it is necessary for the agency to meet the requirements of R2-1-602(B). The request for exemption shall include an explanation of why the total requirements of R2-1-602 cannot be met. The request for exemption shall be submitted with the plan described in R2-1-603(A).

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**R2-1-605. ~~Response from Director Repealed~~**

- ~~**A.** If the plan submitted pursuant to R2-1-603 is unacceptable, the Director shall notify the agency head within 30 days of receipt of the plan. The notice shall detail the portions of the plan which are not acceptable and suggest possible remedies. If there has not been a notice issued within 30 days of receipt of the plan, the plan shall be considered approved.~~
- ~~**B.** The Director shall respond with a decision to the agency head within 30 days of receipt of the request for exemption, pursuant to R2-1-604.~~