



NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKINGS

This section of the Arizona Administrative Register contains Notices of Supplemental Proposed Rulemakings.

After an agency has filed a Notice of Proposed Rulemaking and it is published in the Register, an agency may decide to make substantial changes to the rule after it is proposed.

The agency prepares a Notice of Supplemental Proposed Rulemaking with these proposed changes. When filed, the Notice is published under the deadline schedule in the back of the Register.

The Notice of Supplemental Proposed Rulemaking shall be published in the Register before holding any oral proceedings (A.R.S. § 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of these rules should be addressed to the person listed in item #4 below. Refer to item #11 for information related to oral proceedings, public comments and the close of record.

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

[R16-238]

PREAMBLE

1. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rules:

Notice of Docket Opening: 22 A.A.R. 2568, September 16, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 2555, September 16, 2016

Table with 2 columns: Articles, Parts, or Sections Affected (as applicable) and Rulemaking Action. Rows include R2-8-401, R2-8-403, and R2-8-405, all with 'Amend' as the action.

3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 41-1092 et seq.

4. The agency's contact person who can answer questions about the rulemaking:

Name: Jessica A.R. Thomas, Rules Writer

Address: Arizona State Retirement System, 3300 N. Central Ave., Suite 1400, Phoenix, AZ 85012-0250

Telephone: (602) 240-2039

E-mail: JessicaT@azasrs.gov

5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

R2-8-401 contains definitions that are applicable to this Article. R2-8-401 needs to be amended to reflect that for purposes of appeals, the "Board" refers to the Committee designated by the Board to hear appeals. R2-8-403 allows a person who is dissatisfied with a decision by the Director to file an appeal with the ASRS by submitting a Request for Hearing of an appealable agency action. The ASRS will amend the rule to distinguish between an appeal related to a long-term disability determination and an appeal related to a member benefits determination. R2-8-405 allows a person who is dissatisfied with the final decision of the appeal to file a motion for rehearing or review. The ASRS will amend this rule to distinguish between a motion for reconsideration and a motion for rehearing. The amended rules will better reflect the ASRS appeals process and will make the appeal rules more consistent, clear, and understandable; this rulemaking will ensure members have notice about how the ASRS processes different types of appeals.



6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or 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:

None

7. An explanation of the substantial change that resulted in this supplemental notice:

In R2-8-403, the ASRS added subsection (H) to clarify when an appellant will receive a response to a letter of appeal at the assistant director level. Also, the ASRS further amended R2-8-403(D) to clarify when an appellant will receive a response letter to a letter of appeal at the Director level. Finally, the ASRS changed “his designee” to “such director’s designee” in order to conform to rulemaking standards.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies the appeals process. Clarifying the appeals process will increase understandability of how a person may submit an appeal and will ensure members of the public understand how an appeal will be handled with the ASRS, which will increase the effectiveness and efficiency of the appeals process; thus, reducing the regulatory burden and the economic impact.

10. The agency’s contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-mail: JessicaT@azasrs.gov

11. The time, place, and nature of the proceedings to make, amend, renumber or repeal the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the supplemental proposed rule:

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

Date: December 27, 2016
Time: 9:00 a.m.
Location: Arizona State Retirement System
10th Floor Board Room
3300 N. Central Ave.
Phoenix, AZ 85012-0250

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

None of the rules requires a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

There are no federal laws applicable to these rules.

c. Whether a person submitted an analysis to the agency that compares the rule’s impact on the competitive-ness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None



14. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

Section

R2-8-401. Definitions

R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

R2-8-401. Definitions

The following definitions apply to this Article, unless otherwise specified:

- 1. "Appealable agency action" means the same as in A.R.S. § 41-1092(3).
- 2. "Board" means a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1).
- 3. "Final administrative action" means the same as in A.R.S. § 41-1092 and is rendered by the Board.

R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:

- 1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
- 2. To the ASRS Member Services Division Assistant Director, or such assistant director's designee, if the appeal relates to an agency decision other than a long-term disability decision.

B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such assistant director's designee, shall send a response letter to the person requesting the appeal notifying the person of:

- 1. The decision the agency is making in response to the letter of appeal; and
- 2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.

C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.

D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:

- 1. The agency action the ASRS is taking in response to the letter of appeal; and
- 2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).

~~A.E.~~ AFor an appealable agency action, a person who is not satisfied with a decision by the Director or an agency action pursuant to subsection (D) that is an appealable agency action may file a Request for a Hearing, in writing, with the Director ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The request Request shall include the following:

- 1. The name and mailing address of the member, employer, or other person filing the Request;
- 2. The name and mailing address of the attorney for the person filing the Request, if applicable;
- 3. A concise statement of the reasons for the appeal.

~~B.F.~~ The person requesting a hearing shall file the Request for a Hearing with the ASRS Office of the Director within 30 days after receiving a response letter decision of the Director and including a Notice of an Appealable Agency Action, pursuant to subsection (E). The date the request is filed is established by the Director's date stamp on the face of the first page of the request.

~~C.G.~~ Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).

H. Pursuant to subsection (B):

- 1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
- 2. The Member Services Division Assistant Director, or such assistant director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.

R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision

A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action aggrieved by a final decision may file with the Board a written motion Motion for



- ~~rehearing~~ Rehearing Before the Board, in writing, ~~or review of the final decision~~ specifying the particular grounds for rehearing before the Board not later than 30 days after service of the decision.
- B.** ~~Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.~~
- B-C.** A party may amend a ~~motion~~ Motion for ~~rehearing~~ Rehearing Before the Board or a Motion for ~~review~~ Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or ~~the~~ amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion ~~or the amended motion~~, and may provide for oral argument.
- C-D.** The Board may grant a ~~Motion for rehearing~~ Rehearing Before the Board or a Motion for ~~review~~ Review of a Final ~~decision~~ Decision for any of the following causes ~~that materially affecting~~ affects the moving party's rights:
1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
 2. Misconduct of the Board, the hearing officer, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing ~~or during the process of the action~~;
 7. That the decision, ~~or findings of fact~~, is not justified by the evidence or is contrary to law.
- D-E.** The Board may affirm or modify the ~~final administrative~~ decision or grant a rehearing ~~before the Board~~ or review ~~of final administrative decision~~ to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- E-F.** Not later than 10 days after the ~~final administrative~~ decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its ~~final administrative~~ decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- F-G.** When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- G-H.** The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- H-I.** If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.