



NOTICES OF PROPOSED RULEMAKING

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

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, 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)

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

[R16-133]

PREAMBLE

- | | |
|---|---------------------------------|
| <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R2-8-704 | Amend |
| R2-8-706 | Amend |
- 2. 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. §§ 38-711, 38-738, 38-783
- 3. 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 Rulemaking Docket Opening: 22 A.A.R. 1064, May 6, 2016
- 4. The agency’s contact person who can answer questions about the rulemaking:**
 Name: Jessica A. Ross, Rule Writer
 Address: State Retirement System
 3300 N. Central Ave., Suite 1400
 Phoenix, AZ 85012-0250
 Telephone: (602) 240-2039
 E-mail: JessicaR@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 An agency’s justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
 The ASRS needs to amend approximately two rules in Article 7. The rules need to reflect that Contributions Not Withheld (CNW) payments are not due to the ASRS when the employer remits an Alternate Contribution Rate (ACR) payment pursuant to A.R.S. § 38-766 or when contributions are made to another Arizona retirement system. This amendment will prevent the employer from overpaying contributions during the same time period and will clarify that members are not entitled to receive service credit for the same hours worked in more than one state retirement system. The rules also need to reflect that the employer representative is not required to initial each statement of understanding on the Verification of Contributions Not Withheld form; and that gross salary and hours worked are reported by pay period within each fiscal year.
- 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. 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

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

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 rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. Reflecting that an ACR is not required, and no CNW situation arises, when a retired member returns to work for an Employer of another state retirement plan will clarify the CNW process, thereby reducing the regulatory burden imposed on the public. This rulemaking will ensure that ASRS employers have notice about how CNW situations will be handled. Thus, the economic impact is minimized.

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

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

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

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

Date: September 14, 2016
Time: 9:00 a.m.
Location: Arizona State Retirement System
10th Floor Board Room
3300 N. Central Ave.
Phoenix, AZ 85012-0250

11. 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:

Federal law applies to retirement programs, but no federal law specifically applies to this rulemaking.

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

No analysis was submitted.

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

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

- Section R2-8-704. Member’s Discovery of Error
- R2-8-706. Determination of Contributions Not Withheld

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

R2-8-704. Member’s Discovery of Error

~~A.~~ If a member believes that an ~~ASRS employer~~Employer has not withheld contributions for the member for a period of eligible service, the member shall:

~~1-A.~~ Provide the ~~ASRS employer~~Employer with documentation of the member’s claim and request that the ~~ASRS employer~~



Employer provide a letter that includes the information in the Verification of Contributions Not Withheld form or complete a Verification of Contributions Not Withheld form that includes:

- a-1. The member's full name;
 - b-2. Other names used by the member;
 - e-3. The member's Social Security number;
 - d-4. Whether the position was covered under the ~~ASRS employer's~~ Employer's 218 agreement prior to July 24, 2014;
 - e-5. The position title the member held at the time the contributions should have been withheld;
 - f-6. The eligibility of the member at the time the contributions should have been withheld;
 - g-7. The following statements of understanding and agreements ~~to be initialed~~ certified by the authorized ~~employer rep-~~ representative filling out the form Employer representative's signature indicating:
 - i-a. I understand it is my responsibility to verify the accuracy of the information I am providing on this form. I understand any individual who knowingly makes a false statement, or who falsifies or permits to be falsified any record of the ASRS with an intent to defraud the ASRS, is guilty of a Class 6 felony pursuant to A.R.S. § 38-793; and
 - ii-b. I understand that, based on the information provided on this form, the ASRS may determine that contributions are owed on behalf of the member listed on this form, and the ~~ASRS employer~~ Employer may incur a substantial financial obligation; I understand that I may receive an invoice for the member contributions I owe.
 - h-8. The following information ~~months worked, the hours per week worked, and the compensation earned by the member,~~ by fiscal year:
 - a. All pay period end dates;
 - b. The hours per week worked within each pay period; and
 - c. The compensation earned by the member within each pay period.
 - i-9. The name of the ~~ASRS employer~~ Employer;
 - j-10. The printed name and signature of the authorized ~~employer~~ Employer representative;
 - k-11. The daytime telephone number of the authorized ~~employer~~ Employer representative;
 - l-12. The title of the authorized ~~employer~~ Employer representative; and
 - m-13. The date the authorized ~~employer~~ Employer representative signed the form;
- 2-B. Provide the ASRS with the completed Verification of Contributions Not Withheld form; and
- 3-C. If the ~~ASRS employer~~ Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the ~~ASRS employer~~ Employer completes on the form, the member shall provide the ASRS with the documentation the member believes supports the allegation that contributions should have been withheld, that includes proof:
- a-1. That the employee was covered under the ~~ASRS employer's~~ Employer's 218 agreement prior to July 24, 2014,
 - b-2. Of the number of hours worked,
 - e-3. Of the length of time the member was employed by the ~~ASRS employer~~ Employer, and
 - d-4. Of the compensation paid to the member by the ~~ASRS employer~~ Employer.

R2-8-706. Determination of Contributions Not Withheld

- A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the ~~ASRS employer~~ Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B. Except for a member who met active membership requirements while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
 - 1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
 - 2. The employee participates in:
 - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
 - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- B-C. Except for returning to work under A.R.S. § 38-766.01(D), the presence of a contract between a member and the ~~ASRS employer~~ Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- C-D. If there is any discrepancy between the documentation provided by the ~~ASRS employer~~ Employer and the documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- D-E. The ASRS shall provide to the ~~ASRS employer~~ Employer and the member a written statement that includes:
 - 1. The dates of eligible service for which contributions were not withheld,
 - 2. The dollar amount of contributions that should have been made,
 - 3. The dollar amount of the contributions to be paid by the ~~ASRS employer~~ Employer,
 - 4. The interest on the ~~ASRS employer~~ Employer contributions and member contributions to be paid by the ~~ASRS employer~~ Employer,
 - 5. The dollar amount of contributions to be paid by the member, and
 - 6. ~~To the member, the~~ The various payment options that may apply to the member, as specified in R2-8-512 through R2-8-519.