



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

[R16-98]

PREAMBLE

- | | |
|--|---------------------------------|
| <u>1. Article, Part or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R2-8-126 | 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, 38-764, 38-769, 38-771, 38-771.01, and 38-774
- 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 Docket Opening: 21 A.A.R. 1834, September 11, 2015
 Notice of Proposed Rulemaking: 21 A.A.R. 2281, October 9, 2015
 Notice of Final Rulemaking: 22 A.A.R. 79, January 15, 2016
 Notice of Substantive Policy Statement: 22 A.A.R. 707, April 1, 2016
 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: Arizona State Retirement System
 3300 N. Central Ave., Ste. 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:**
 R2-8-126 provides notice to members regarding what type of annuity the member may elect at retirement based on age and/or dollar amount. However, the ASRS will amend subsections (I) and (J) of this rule to better clarify those annuity options are applicable only to retirees with an original retirement date on or after the effective date of those provisions.
- 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:

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 current annuity options without imposing any additional requirements on the public. Clarifying the applicability of R2-8-126(I) and (J) will increase understandability of the annuity options available to a member at retirement and will ensure ASRS members and their spouses have notice regarding those options; thus, reducing the regulatory burden and the economic impact.

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: Arizona State Retirement System
3300 N. Central Ave., Ste. 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: August 16, 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:

26 USC 401(a)(9), and corresponding Treasury Regulations: §§ 1.401(a)(9)-1 (Q&A-2(d)); 1.401(a)(9)-9 (Q&A-2); 1-401(a)(9)-6 (Q&A-2) specifically apply to this rulemaking. These federal regulations indicate that a member may participate in certain types of annuity options at certain ages, regardless whether the contingent annuitant is a current or former spouse. With the changes completed in this rulemaking, R2-8-126 will not be more stringent than these federal laws.

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 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section
R2-8-126. Calculating Optional Forms of Benefits

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-126. Calculating Optional Forms of Benefits

- A. For the purposes of this Section, the following definitions apply, unless stated otherwise:
1. ~~“prior-prior service credit”~~ means a “service credit” listed in R2-8-501(24), credited service that is earned pursuant to A.R.S. § 38-739, or a service credit that is transferred or redeemed pursuant to A.R.S. §§ 38-730, 38-771, or 38-921 et seq.
 2. “Original retirement date” means:
 - a. The date a member retires from the ASRS for the first time; or
 - b. The date a member retires from the ASRS after returning to active membership for 60 consecutive months or more pursuant to A.R.S. § 38-766(C).
- B. An individual who is 104 years of age or older at the time of retirement is not eligible to ~~select~~ elect an option of life annuity with a term certain.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to ~~select~~ elect the options of life annuity with ten years certain or life annuity with 15 years certain.
- D. An individual who is 85 years of age or older at the time of retirement is not eligible to ~~select~~ elect the option of life annuity with 15 years certain.
- E. As authorized under A.R.S. § 38-764(F), if the life annuity of any ~~Plan~~ member is less than a monthly amount determined by the Board, the ASRS shall not pay the annuity. Instead, the ASRS shall make a lump sum payment in the amount determined by using appropriate actuarial assumptions.
- F. The ASRS shall calculate a member’s or beneficiary’s benefits, based on the attained age of the member or beneficiary, determined in years and full months, as of:
 1. ~~the effective~~ The date of the benefit payment member’s retirement; or
 2. The date of the member’s death, if the beneficiary is eligible to elect the survivor benefit as monthly income for life pursuant to A.R.S. § 38-762(C).
- G. ~~The~~ Before the ASRS applies the calculation for an optional form of retirement benefit provided in A.R.S. § 38-760, the ASRS shall add include any prior service credit benefit that is payable to a member applicable to the life annuity of the member before the ASRS applies any optional payment plan calculation provided for in A.R.S. § 38-760.
- H. A member who is ten ~~or more~~ years and one day, or more, older than the member’s non-spousal contingent annuitant is not eligible to participate in a 100% joint-and-survivor option. A member who is 24 ~~or more~~ years and one day, or more, older than the member’s non-spousal contingent annuitant is not eligible to participate in a 66 2/3% joint-and-survivor option.
- I. ~~Notwithstanding~~ For members whose original retirement date is on or after March 6, 2016, notwithstanding subsection (H), a member who is ten ~~or more~~ years and one day, or more, older than the member’s ex-spouse contingent annuitant is eligible to participate in a 100% joint-and-survivor option, if:
 1. The member ~~selected~~ elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
 2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member’s account.
- J. ~~Notwithstanding~~ For members whose original retirement date is on or after March 6, 2016, notwithstanding subsection (H), a member who is 24 ~~or more~~ years and one day, or more, older than the member’s ex-spouse contingent annuitant is eligible to participate in a 66 2/3% joint-and-survivor option, if:
 1. The member ~~selected~~ elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
 2. The member submits a DRO to the ASRS which requires the ex-spouse to be the contingent annuitant on the member’s account.
- K. Notwithstanding subsection (F), for purposes of determining whether a member is eligible to participate in a joint-and-survivor option, the ASRS shall calculate the difference in a member’s age and the contingent annuitant’s age based on the birthdates of the member and the contingent annuitant.