

NOTICE OF PROPOSED RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

R2-8-120

New Section

R2-8-123

New Section

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 statute: A.R.S. §§ 38-755, 38-760, and 38-776

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 rule:

Notice of Rulemaking Docket Opening: XX A.A.R. XX

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

Name: Patrick M. Klein, Assistant Director

Address: ASRS

3300 N. Central Ave., Suite 1400

Phoenix, AZ 85012-0250

Telephone: (602) 240-2044

Fax: (602) 240-5303

E-mail: PatK@azasrs.gov

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 An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

Effective July 1, 2013, ASRS statutes changed to require an ASRS member to name the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account and, at the time of retirement, to choose a joint and survivor annuity that names the current spouse as 50 percent contingent annuitant. The statutes also provide a means for the current spouse to waive this right and consent to an alternative. This rulemaking implements the statutory change.

In a five-year-review report approved by the Council on July 13, 2013, the ASRS intentionally allowed R2-8-123, Actuarial Assumptions and Actuarial Value of Assets, to expire. ASRS has determined that some of the information in that rule is valuable so a new R2-8-123 is made in this rulemaking.

This rulemaking is exempt from the rulemaking moratorium contained in Executive Order 2012-03 under paragraph (4)(c) of the Order.

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

ASRS did not review or rely on any study in its evaluation of or justification for this rulemaking.

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 rulemaking simply implements statute. It is statute that has economic impact on members and their spouses by limiting the range of choice when designating a beneficiary.

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

Name: Patrick M. Klein, Assistant Director

Address: ASRS

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10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber 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 regarding the proposed rules will be held as follows:

Date: Tuesday, June 3, 2014

Time: 9:00 A.M.

Location: Arizona State Retirement System

10th Floor Board Room

3300 North Central Avenue

Phoenix, AZ 85012

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:

Neither 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. However, there is no federal law specifically applicable to this rulemaking.

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

No analysis was submitted.

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

No materials are incorporated by reference.

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

- R2-8-120. ~~Repealed~~ Designating a Beneficiary; Spousal Consent to Designation
- R2-8-123. ~~Expired~~ Actuarial Assumptions and Actuarial Value of Assets

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-120. Repealed Designating a Beneficiary; Spousal Consent to Designation

A. In addition to the definitions at A.R.S. § 38-711, the following apply to this Section unless otherwise specified:

1. “Beneficiary” means a person designated to receive money or other benefits when someone dies.
2. “Contingent annuitant” means the person that a member designates to receive continued annuity payments after the member dies.
3. “Joint and survivor annuity” means an optional form of retirement benefits described at A.R.S. § 38-760(B).
5. “Period certain and life annuity” means an optional form of retirement benefits described at A.R.S. § 38-760(B).
4. “QDRO” means qualified domestic relations order, which is a judgment, decree, or order directing a retirement plan to make payments to an alternative payee.
6. “Spouse” means the individual to whom a member is married under Arizona law.

B. Effective July 1, 2013, a married member:

1. Who is not retired, shall name and maintain the member’s current spouse as primary beneficiary of at least 50 percent of the member’s retirement account unless the spouse consents to an alternate beneficiary; and
2. Who retires, shall choose a joint and survivor annuity and name the member’s current spouse as contingent annuitant of at least 50 percent of the member’s retirement benefit unless the spouse consents to an alternative.

C. Application of subsection (B).

1. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (B).
2. The ASRS shall not apply subsection (B) to a lump-sum retirement authorized under A.R.S. § 38-764.
3. The ASRS shall not apply subsection (B) if a member submits a letter to the ASRS in which the member affirms under penalty of perjury that spousal consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).

D. Changing a beneficiary designation:

1. If a married member changes a beneficiary designation on or after July 1, 2013, the member shall ensure that the new beneficiary designation is consistent with the requirements specified in subsection (B);
2. If a married member who retired before July 1, 2013, and:
 - a. Chose a straight-life annuity wishes to change the member’s beneficiary, the member shall ensure that the new beneficiary designation is consistent with subsection (B); or

- b. Chose a period certain or joint and survivor annuity wishes to change either the annuity option or the contingent annuitant, the member shall ensure that the new beneficiary designation is consistent with subsection (B).
- E.** Re-retirement. A married member who re-retires, as described in A.R.S. § 38-766:
1. Within 60 months of the member's previous retirement date, shall elect the same annuity option and beneficiary as the member made at the time of the previous retirement; or
 2. More than 60 months after the member's previous retirement date, shall comply with subsection (B).
- F.** Involuntary cancellation of retirement. If a married member retires on or after July 1, 2013, and is issued one or more estimate checks but fails to comply with subsection (B) within 30 days after the member's effective retirement date, the member shall submit a signed letter to ASRS stating that the member's spouse refuses to consent to the chosen alternative and asking that the retirement be cancelled. The member may submit another retirement application that complies with subsection (B). The member's new effective retirement date is the date ASRS receives the new application. ASRS shall not issue additional estimate checks to a member whose retirement was involuntarily cancelled.
- G.** Survivor benefits:
1. If a married member last made a beneficiary designation before July 1, 2013, the ASRS shall, at the time of the member's death, honor the beneficiary designation even if the beneficiary designation is not consistent with the requirements specified subsection (B); and
 2. If a married member made a beneficiary designation on or after July 1, 2013, that is not consistent with the requirements specified in subsection (B), the ASRS shall, at the time of the member's death:
 - a. Notify both the spouse and designated beneficiary and:
 - i. Provide the spouse with an opportunity to waive the right under subsection (B); and
 - ii. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (B); and
 - b. Designate 50 percent of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond under subsection (G)(2)(a) within 30 days after notification.
- H.** Effect of legal documents. In general, a legal document such as a QDRO or prenuptial agreement will supersede the requirements in subsection (B). The ASRS shall ask the Office of the Attorney General to review the legal document before the ASRS decides how to disburse the retirement benefit.
- I.** Spousal waiver and consent; consent revocation
1. The current spouse of a member has a right to:
 - a. Be designated as primary beneficiary of at least 50 percent of the member's retirement account, and
 - b. Have the member choose a joint and survivor annuity with the spouse as contingent annuitant of at least 50 percent of the retirement benefit.
 2. To waive the right described in subsection (I)(1) and consent to an alternative, the current spouse shall complete and have notarized a spousal consent form, which is available from the ASRS. If the current spouse is not capable of completing the spousal consent form because of an incapacitating mental or

physical condition, a person with power of attorney or a guardian may complete the spousal consent form on behalf of the current spouse.

3. A spouse may revoke a waiver and consent by sending written notice to ASRS and ensuring the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

R2-8-123. ~~Expired~~ Actuarial Assumptions and Actuarial Value of Assets

A. The following definitions apply to this Section unless otherwise specified:

1. “Actuarial assumption” means an estimate of an uncertain future event that affects pension liabilities.
2. “Board” means the same as in A.R.S. § 38-711.
3. “Investment yield rate” means a percentage of return on an asset.
4. “Market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.

B. The Board adopts the following actuarial assumptions:

1. The interest and investment yield rate is eight percent per annum, compounded annually.
2. The actuarial value of assets equals the market value of assets:
 - a. Minus, for years in which actual investment return exceeds expected investment return, a 10-year (five-year for fiscal years before fiscal year 2002) phase-in of the excess; and
 - b. Plus, for years in which actual investment return falls short of expected investment return, a 10-year (five-year for fiscal years before fiscal year 2002) phase-in of the shortfall.