

# PROPOSED RULEMAKING

## DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 33]

### Commercial Motion Picture Sales; Tax Exemption Certificate

The Department of Community and Economic Development (Department), under the authority of section 204(54) of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7204(54)), proposes to adopt Chapter 33 (relating to commercial motion picture sales tax exemption certificate). The purpose of the proposed regulation is to prescribe a Pennsylvania Exemption Certificate (FORM REV-1220) as the form to be used by producers of commercial motion pictures, who are qualified to take advantage of the Pennsylvania Sales and Use Tax exclusion provided by section 204(54) of the TRC.

#### Introduction

Section 204(54) of the TRC excludes from the tax imposed by section 202 of the TRC (Pennsylvania sales tax) the "sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the production of a feature-length commercial motion picture distributed to a national audience: Provided, however, that the production of any motion picture for which the property will be used does not violate any Federal or State law; and, Provided further, that the purchaser shall furnish to the vendor a certificate substantially in the form as the Department of Community and Economic Development may, by regulation, prescribe, stating that the sale is exempt from tax pursuant to this clause." Before qualified producers of commercial motion pictures can take advantage of the tax exclusion, they must know what form of certificate to use. Under section 204(54) of the TRC, only the Department may prescribe the type of certificate to be used. The purpose of the proposed regulation is to prescribe a Pennsylvania Exemption Certificate (FORM REV-1220) as the form to be used by producers of commercial motion pictures, who are qualified to take advantage of the Pennsylvania Sales and Use Tax exclusion provided by section 204(54) of the TRC.

#### Analysis

Section 33.1 (relating to required form) prescribes the type of certificate to be furnished by a qualified producer of commercial motion pictures to a vendor to comply with the statutory exclusion from the Pennsylvania Sales and Use Tax.

#### Fiscal Impact

The proposed regulation has no fiscal impact on the Commonwealth, political subdivisions or the public.

#### Paperwork

Because the certificate to be used by qualified producers of commercial motion pictures is a Pennsylvania Exemption Certificate (FORM REV-1220) which is already in use, the proposed regulation imposes no new or different paperwork requirements.

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 17, 1998, the Department submitted a copy of this proposed regulation to the Independent Regulatory Review Commission (IRRC), the Chairperson of the House Business and Economic Development Committee and the Chairperson of the Senate Community and Economic Development Committee. In addition to submitting the proposed regulation, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Improving Government Regulations." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Commission, if IRRC has objections to any portion of the proposed regulation, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of objections raised.

#### Effective Date/Sunset Date

The proposed regulation shall take effect upon final publication in the *Pennsylvania Bulletin*, and shall apply retroactively to May 7, 1997.

The proposed regulation will expire when section 204(54) of the TRC no longer requires the Department to prescribe the type of certificate to be used under this section.

#### Contact Person

Interested persons are invited to submit in writing any comments, suggestions or objections regarding the proposed regulation to Jill B. Busch, Deputy Chief Counsel, Department of Community and Economic Development, Room 530 Forum Building, Harrisburg, PA 17120, (717) 783-8452.

SAMUEL E. HAYES, Jr.,  
*Secretary*

**Fiscal Note:** 4-67. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

#### PART I. GENERAL ADMINISTRATION

#### Subpart E. COMMERCIAL MOTION PICTURES

#### CHAPTER 33. COMMERCIAL MOTION PICTURE SALES TAX EXEMPTION CERTIFICATE

#### § 33.1. Form required.

Producers of motion pictures, who are qualified to take advantage of the Pennsylvania Sales and Use Tax exclusion provided by section 204(54) of the Tax Reform Code

of 1971 (72 P. S. § 7204(54)), shall use a Pennsylvania Exemption Certificate (FORM REV-1220).

[Pa.B. Doc. No. 98-482. Filed for public inspection March 27, 1998, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 140 AND 181]

### Eligibility Provisions for the Healthy Horizons Program for the Elderly/Disabled; Medical Assistance Income

#### *Statutory Authority*

The Department of Public Welfare (Department), under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)), intends to amend its regulations to read as set forth in Annex A.

#### *Purpose*

The purpose of the proposed amendments is to change how the receipt of a lump sum is treated when determining eligibility for Medical Assistance (MA) in Chapters 140, Subchapter B and 181 (relating to eligibility provisions for the healthy horizons program for the elderly/disabled; and income provisions for categorically needy NMP-MA are MNO-MA). Current regulations state that a lump sum is treated as a resource unless it is beneficial to the client to treat it as income. This proposed change will require that when a lump sum has been treated as income in the month of receipt, any balance remaining in subsequent months will be treated as a resource. This proposed change applies to all categories of MA, including Healthy Horizons. This proposed change provides that a client who chooses to treat a lump sum as income is no worse off under this proposal than another client who chooses to treat lump sum as a resource from the time it was received.

#### *Background*

Effective November 1, 1988, the Department adopted final regulations patterned after the rules for the corresponding Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI) Cash Assistance Programs except for the treatment of lump sum. The AFDC Cash Assistance Program treats lump sum under a special lump sum rule which provides for a period of ineligibility. The SSI Cash Assistance Program treats a lump sum as a resource. The disparity of treatment of a lump sum in the cash assistance programs led to the flexibility in the treatment of a lump sum for the MA Program. The individual currently has the choice of treating a lump sum as a resource, unless it is more financially helpful to the individual to have it treated as income. If the lump sum is counted as income, any balance of the lump sum remaining in subsequent months is not considered a resource under existing regulations.

As a result of this flexibility, the regulations provide a special resource exclusion for the remaining lump sum. The exclusion enables an individual to continue to receive MA benefits even though resources, including funds remaining from the lump sum, may be substantially in excess of the resource limit. Due to the fact that individuals with substantial lump sum benefits are being deter-

mined eligible for MA, even if there is a balance of the lump sum remaining which exceeds the MA resource limits, the Department is proposing to revise the regulations to specify that lump sum payments retained beyond the month of receipt are treated as a resource. An individual still has the choice of deciding whether to have the lump sum treated as a resource or as income in the month of receipt. However, any portion remaining in subsequent months will be treated as a resource along with all other countable resources subject to the maximum MA resource limit.

#### *Need for Amendments*

These proposed amendments are needed to establish equitable treatment between clients who have excess resources because of a lump sum and clients who have excess resources for any other reason, by changing the requirements for the treatment of lump sum income in Chapters 140, Subchapter B and 181.

#### *Summary*

*Treatment of lump sum payment (§§ 140.291(c), (d) and (d)(3))*

The proposed revision to this section counts as a resource the balance of the lump sum remaining subsequent to the calendar month in which the lump sum is received and is counted as income for the applicant/recipient of the Healthy Horizons Program. The content of subsection (d) is no longer applicable. The contents of the old subsection (d)(1) and (2) are moved to (c)(1) and (2). The old subsection (d)(3) is the revised subsection (d).

*Treatment of lump sum payment (§ 181.31(d))*

The proposed revision to this section counts as a resource the balance of the lump sum remaining subsequent to the calendar month in which the lump sum is received and is counted as income. This applies to an applicant/recipient of SSI-related and General Assistance (GA)-related categories of the Categorically Needy Nonmoney Payment (NMP) and Medically Needy Only (MNO) MA Programs.

#### *Affected Persons and Organization*

These proposed amendments affect all applicants and recipients of MA, living in the community or residing in an institution, who receive a lump sum.

#### *Accomplishments/Benefits*

These proposed amendments will change how the balance of a lump sum remaining subsequent to the month of receipt is treated. The proposed change would treat as a resource the balance of a lump sum remaining subsequent to the month it was received and treated as income for MA eligibility purposes. This proposed change denies MA eligibility for those individuals with a sizeable balance of a lump sum after only 1 month of MA ineligibility. These individuals could qualify for MA once their resources and income are within allowable limits.

#### *Fiscal Impact*

##### *Commonwealth*

It is anticipated that implementation of these proposed amendments will result in savings to the Commonwealth during Fiscal Year 1997-1998 of approximately \$0.182 million (\$0.086 million in State funds). Annual savings for Fiscal Year 1998-1999 are estimated in the amount of \$0.276 million (\$0.130 million in State funds).

##### *Private Sector*

There are no anticipated costs for the private sector.

*Paperwork Requirements*

These proposed amendments do not require additional forms or reports.

*Effective Date*

These proposed amendments will be effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

*Sunset Date*

No sunset date is applicable. The Department continuously reviews the MA Program and regulations through the Federally monitored Quality Control process. Also, the Federal Health Care Financing Administration staff conducts audits periodically on specific aspects of the MA Program.

*Public Comment Period*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to the Department of Public Welfare, Patricia H. O'Neal, Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, PA 17120, (717)787-4081 within 30-calendar days of the date of publication of this notice in the *Pennsylvania Bulletin*. All comments received within 30-calendar days will be reviewed and considered in the preparation of the final-form regulations. Comments received after the 30-day comment period will be considered for any subsequent revision of these proposed amendments.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users).

*Regulatory Review Act*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 17, 1998, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposal, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation of objections raised, by the Department, the General Assembly and the Governor.

FEATHER O. HOUSTON,  
*Secretary*

**Fiscal Note:** 14-421. No fiscal impact; (8) recommends adoption. These changes are expected to result in savings of \$31,000 to MA—Inpatient and \$54,000 to MA—Outpatient in 1997—1998 when implemented.

**Annex A**

**TITLE 55. PUBLIC WELFARE**  
**PART II. PUBLIC ASSISTANCE MANUAL**  
**Subpart C. ELIGIBILITY REQUIREMENTS**  
**CHAPTER 140. SPECIAL MA ELIGIBILITY PROVISIONS**  
**Subchapter B. ELIGIBILITY PROVISIONS FOR THE HEALTHY HORIZONS PROGRAM FOR THE ELDERLY/DISABLED**

**TREATMENT OF LUMP SUM [ PAYMENTS ] PAYMENT**

§ 140.291. Treatment of lump sum [ payments ] payment.

\* \* \* \* \*

(c) If the lump sum is treated as income, it is counted as income in the calendar month received.

**[ (d) A balance remaining of the lump sum payment subsequent to the calendar month the lump sum payment was received and counted as income is not considered a resource to the applicant/recipient. ]**

(1) **[ Earned ] An earned** lump sum [ payments ] such as delayed wages, bonuses and EITC [ are ] is treated as earned income and [ are ] is added to other earned income received in the calendar month. The deductions listed under § 140.282 (relating to deductions from earned income) are applied to determine countable net earned income.

(2) **[ Unearned ] An unearned** lump sum [ payments ] such as cash prizes, cash lottery winnings, life insurance benefits, cash inheritances and personal injury [ are ] is treated as unearned income and [ are ] is added to other unearned income received in the calendar month. The deductions listed under § 140.281 (relating to deductions from unearned income) are applied to determine countable net unearned income.

**[ (3) ] (d)** The balance [ remaining ] of the lump sum [ payment ] remaining subsequent to the calendar month the lump sum [ payment ] was received and counted as [ earned income or unearned ] income as described in subsection (c) is [ not ] considered a resource to the applicant/recipient or the spouse of the applicant/recipient.

**Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE**

**CHAPTER 181. INCOME PROVISIONS FOR CATEGORICALLY NEEDY NMP-MA AND MNO-MA**

**Subchapter A. GENERAL PROVISIONS FOR MA INCOME COMMON TO ALL CATEGORIES OF MA**

**TREATMENT OF LUMP SUM PAYMENT COMMON TO ALL CATEGORIES OF MA**

§ 181.31. Treatment of lump sum payment.

\* \* \* \* \*

(d) The balance [ remaining ] of the lump sum [ payment ] remaining subsequent to the calendar month the lump sum [ payment ] was received and counted as

[earned or unearned] income as described in subsection (c) is [not] considered a resource to the applicant/recipient.

[Pa.B. Doc. No. 98-483. Filed for public inspection March 27, 1998, 9:00 a.m.]

## FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 91, 95, 97, 109 AND 113]

### Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 91, 95, 97, 109 and 113. The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments concern boating.

#### A. Effective Date

These proposed amendments will, if approved on final rulemaking, go into effect upon publication of an order adopting the regulations.

#### B. Contact Person

For further information on the proposed changes, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

#### C. Statutory Authority

These proposed amendments are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

#### D. Purpose and Background

The proposed amendments are designed to update, modify and improve Commission regulations pertaining to boating. The specific purpose of the proposed amendments is described in more detail under the summary of proposal. Prior to consideration by the Commission, the Commission's Boating Advisory Board considered the proposed amendments and recommended adoption by the Commission.

#### E. Summary of Proposal

1) *Section 91.2 (relating to definitions)*. The Commission's Bureau of Law Enforcement has reported that many boat operators are not counting passengers being towed behind their boats as being included in the number of persons allowed on the boat as rated by the capacity plate. To clarify this requirement, the Commission proposes to amend the definition of "passenger."

2) *Sections 91.4 and 109.3 (relating to age of operator; and personal watercraft)*. The Commission recently amended § 109.3 to provide that: (1) no one 11 years old or younger may operate a personal watercraft; (2) persons 12 to 15 years of age may operate a personal watercraft alone, with no passengers on board, only if they have in their possession a Boating Safety Certificate issued or recognized by the Commission; and (3) persons 12 to 15 years of age may operate a personal watercraft with or without a Boating Safety Certificate if accompanied by someone at least 18 years of age. This is somewhat

different from the requirement of § 91.4 that provides that persons 11 years of age or younger must be accompanied by someone at least 16 years of age to operate a motorboat of 10 horsepower or more. This section also requires persons 12 to 15 years of age to obtain a Boating Safety Certificate to operate boats alone with no restrictions on passengers. If they do not have a certificate, they must be accompanied by someone at least 16 years of age. The primary difference between boats of 10 horsepower or more and personal watercraft is that no one 11 years of age or younger may operate a personal watercraft, and persons 12 to 15 years of age may not operate a personal watercraft with passengers unless the passengers are at least 18 years of age. The new § 109.3 is somewhat difficult to understand or to explain, especially with the different age of operator requirements in § 91.4. To simplify the regulations, the Commission proposes to amend § 91.4 and to delete § 109.3(h) in its entirety.

3) *Section 91.6 (relating to certificates)*. The Commission currently issues Boating Safety Education Certificates free of charge to residents who have successfully completed a National Association of State Boating Law Administrators (NASBLA), an approved Commission, a United States Power Squadrons or a United States Coast Guard Auxiliary (Auxiliary) classroom boating course. The NASBLA recommends that the states recognize, for reciprocity, courses that have been approved by NASBLA and recognized by the United States Coast Guard (U.S.C.G.). The Commission therefore proposes to accept Boating Safety Education Certificates from boaters coming into this Commonwealth from out of state that are issued by another state or province or by the Auxiliary or United States Power Squadrons in another state or province. Certificates issued by private companies or Internet programs would not be accepted.

4) *Section 95.3 (relating to lights for boats)*. The Federal Rules of the Road exclude boats less than 7 meters in length from the requirement of displaying an anchor light when not in a channel or other area where boats normally navigate. The Commission intended, with § 95.3(d), to remove this exemption to require lights on all boats on all waters of this Commonwealth. Instead, a strict reading of the regulation leads to an interpretation that only those boats less than 7 meters are required to display anchor lights. The Commission proposes amending this regulation to clarify that an anchor light is required on all boats at all times on most Commonwealth waters.

5) *Section 97.1 (relating to personal flotation devices)*. This section prohibits the use of recreational vessels without one personal flotation device (PFD) for each person on board. The code does not define the word "recreational," and the word "vessel" is a boat that is defined as "every description of watercraft constructed or sold for the primary purpose of being used as a means of transportation on water." The use of these two terms together creates several problems. One is that the requirement appears not to apply to vessels used in commerce since they are not used for recreation. Second, the strict definition of "vessel" excludes certain other craft from the requirement. If the vessel was not intended as a means of transportation on water, its passengers don't have to have PFDs. The Commission therefore proposes to amend this section to replace the term "recreational vessel" with the broader term "boat" since it was not the original intent of this regulation to limit the PFD requirement to recreational vessels only.

6) *Section 109.3 (relating to personal watercraft)*. A request has been received by the Bureau of Law Enforce-

ment to amend this section so that the number of water skiers towed by a personal watercraft is limited to one. Law enforcement officers have noticed an increase in situations where operators are exceeding the carry capacity of personal watercraft by pulling more than one skier while having a full capacity of passengers on board. If an emergency were to occur or a skier wanted to board the vessel, they would be unable to do so. This creates an unsafe boating practice that needs to be more clearly addressed in the regulations. Therefore, the Commission proposes to amend this section to address this concern.

7) *Chapter 113 (relating to Aids to Navigation and Obstructions to Navigation)*. The United States began conversion of the United States Aids to Navigation System (system) to harmonize with the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System in 1985, and completed the conversion for all U.S.C.G. maintained aids in 1989. The system has not changed in substance. It remains primarily a lateral aids to navigation system. The major changes are the introduction of the yellow special mark, the replacement of the black and white mid-channel aids with the red and white safe water mark, and most notably, the replacement of the older black port-hand buoys with green buoys. Information and regulatory marks remain the same as that of the Uniform State Waterway Marking System (USWMS). The states were not required to change to the system, but the Commission felt that since the U.S.C.G. was making the change, the Commonwealth should as well. The Commission started replacing the black buoys and black and white mid-channel buoys when they were no longer serviceable; the Commission replaced them with the green buoys and the red and white safe water buoys. All buoys in this Commonwealth now conform to the system. The U.S.C.G. has proposed rules that would eliminate the USWMS. The Commission therefore proposes amending Chapter 113 to reflect the current practice.

#### F. Paperwork

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

#### G. Fiscal Impact

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will impose no new costs on the private sector or the general public.

#### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** 48A-77. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart C. BOATING

#### CHAPTER 91. GENERAL PROVISIONS

#### § 91.2. Definitions.

\* \* \* \* \*

(c) The term "passenger" means any person on a boat, including persons being towed using any device.

#### § 91.4. Age of operator.

(a) [ A person 11 years of age or younger may not operate a motorboat propelled by a motor greater than 10 horsepower unless at least one person 16 years of age or older is present on the watercraft. ] A person 11 years of age or younger may not operate a personal watercraft.

(b) [ A person 12 through 15 years of age may not operate a motorboat propelled by a motor of greater than 10 horsepower without obtaining a Boating Safety Certificate issued or recognized by the Commonwealth, unless there is at least one other person in the boat 16 years of age or older. ] A person 11 years of age or younger may not operate a motorboat (other than a personal watercraft) propelled by a motor of greater than 10 horsepower unless at least one person 16 years of age or older is present on the watercraft.

(c) A person 12 through 15 years of age may not operate a motorboat (other than a personal watercraft) propelled by a motor of greater than 10 horsepower unless the person has obtained and has in his possession a Boating Safety Education Certificate or the person is accompanied on board by a person who is 16 years of age or older.

(d) A person 12 through 15 years of age may not operate a personal watercraft unless the person has obtained and has in his possession a Boating Safety Education Certificate and there are no passengers on board the personal watercraft under 16 years of age.

#### § 91.6. Certificates.

(a) \*\*\*

(b) A Boating Safety Education Certificate is one issued to an individual by one of the following:

(1) The Commission or by another state or province for successful completion of a boating safety education program approved by the Commission and the National Association of State Boating Law Administrators.

(2) The United States Coast Guard Auxiliary or the United States Power Squadrons in another state or province for successful completion of a boating safety education program approved by the National Association of State Boating Law Administrators.

CHAPTER 95. MANUFACTURER INSTALLED EQUIPMENT

§ 95.3. Lights for boats.

\* \* \* \* \*

(e) Boat at anchor. [ One all-around white light is needed—Appendix A, Figure 7E. Anchor lights are not required when anchored in special anchorage areas. Boats less than 7 meters (23 feet) in length are required to display anchor lights when anchored in or near a channel, when in an anchorage not designated as a special anchorage area, or where other vessels normally navigate. ]

(1) A boat must display anchor lights when it is anchored where other vessels normally navigate. See Appendix A, Figure 7E.

(2) Exception: Anchor lights are not required on boats anchored in special anchorage areas.

\* \* \* \* \*

CHAPTER 97. OPERATOR PROVIDED EQUIPMENT

§ 97.1. Personal flotation devices.

(a) A person may not use a [ recreational vessel ] boat unless at least one personal flotation device (PFD) of the following types is on board for each person:

\* \* \* \* \*

(b) A person may not use a [ recreational vessel ] boat 16 or more feet in length unless one Type IV PFD is on board in addition to the total number of PFDs required in subsection (a). Canoes and kayaks 16 feet in length and over are exempted from the requirements for carriage of the additional Type IV PFD.

\* \* \* \* \*

CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES

§ 109.3. Personal watercraft.

\* \* \* \* \*

(g) The operator of a personal watercraft with a capacity of two or less persons as determined by the manufacturer, may not tow waterskiers or engage in waterskiing or similar activities while operating a personal watercraft. Other personal watercraft may tow no more than one skier.

[ (h) A person 15 years of age or younger may not operate a personal watercraft on the waters of this Commonwealth, except a person 12 to 15 years of age may operate a personal watercraft if there is a person at least 18 years of age on board the personal watercraft or if the person operating the personal watercraft has obtained a boating safety certificate issued or recognized by the Commission and there are no passengers on board the personal watercraft. ]

CHAPTER 113. AIDS TO NAVIGATION AND OBSTRUCTIONS TO NAVIGATION

§ 113.1. General.

(a) [ The Uniform State Waterway Marking System is the system whereby persons, including State and local governments, may place private aids to

navigation, including regulatory markers, in waters of this Commonwealth, including navigable waters of the United States not marked with aids by the Federal government. ] The Coast Guard administers the United States Aids to Navigation System (33 CFR Part 62 (relating to United States Aids to Navigation System)). The System consists of Federal aids to navigation operated by the Coast Guard, aids to navigation operated by other armed services and private aids to navigation operated by other persons. This System is adopted by the Commission for use in this Commonwealth and is administered on waters not marked by the Coast Guard.

(b) [ The Uniform State Waterway System consists of the following:

(1) A system of regulatory markers that indicates to a watercraft operator the existence of dangerous areas, restricted and controlled areas or that provides general information and directions.

(2) A system of aids to navigation to mark channels and obstructions.

(3) A distinctive color scheme for mooring buoys.

(c) [ An aid to navigation is a device external to a vessel intended to assist a boater in determining position[ , ] or safe course, or warn of dangers or obstructions to navigation.

[ (d) State Aids to Navigation are private aids to navigation placed in State waters that are owned by State, political subdivisions, individuals, corporations or organizations. ]

§ 113.2. Prohibited acts.

(a) Aids, other than those placed by the United States government, may not be placed on or along waters of this Commonwealth unless authorized by the Commission under § 113.4 (relating to permits). [ Aids authorized shall conform fully with the Uniform State Waterway Marking System. ]

\* \* \* \* \*

(d) A person may not place an aid to navigation that is incompatible with the United States Aids to Navigation System.

[Pa.B. Doc. No. 98-484. Filed for public inspection March 27, 1998, 9:00 a.m.]

PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY

[22 PA. CODE CH. 121]

State Grant Program; Early Childhood Education Professional Loan Forgiveness Program

The Pennsylvania Higher Education Assistance Agency (Agency), under authority contained in section 4 of the act of August 7, 1963 (P. L. 549, No. 290) (24 P. S. § 5104); section 1 of the act of January 25, 1966 (P. L. 1546 (1965), No. 541) (24 P. S. § 5151); The Institutional Assistance

Grants Act (24 P. S. §§ 5181—5189); and the Urban and Rural Teacher Loan Forgiveness Act (24 P. S. §§ 5191—5197); and the Agriculture Education Loan Forgiveness Act (24 P. S. §§ 5198—5198.7), proposes to amend §§ 121.1, 121.2, 121.7—121.9, 121.21, 121.32, 121.33, 121.42, 121.48 and 121.56 and add §§ 121.10 and 121.401—121.406.

The changes proposed by the Agency affect the State Grant Program (24 P. S. § 5152.1); Loan Programs (24 P. S. §§ 5104—5112); and the Early Childhood Education Professional Loan Forgiveness Program (24 P. S. §§ 7101—7106).

#### *State Grant Program*

*Section 121.1. Definitions*—This section is proposed to be modified to reflect a recent clarification in the Federal definition of a “veteran” previously adopted by the Board. This is the same definition used in the Federal financial aid programs and the Agency’s use of this definition helps to streamline the application process.

*Section 121.7. Notice of denial and preliminary review procedures*—This section is proposed to be modified to reflect a change of title from “Executive Director” to “President and Chief Executive Officer” as previously authorized by the Board.

*Section 121.8. Applicant and recipient appeals and hearings*—This section is proposed to be modified to reflect a change of title from “Executive Director” to “President and Chief Executive Officer” as previously authorized by the Board.

*Section 121.21. Requirement for higher education grant applicants*—This section is proposed to be changed to facilitate the classification of home schooled students as graduates of an approved high school. An applicant shall be a graduate of an approved high school or the recipient of a Commonwealth Secondary School Diploma to be considered for State Grant aid. The State Grant statute mandates that the Department of Education (DE) determine the equivalent of an approved high school for State Grant purposes. The DE has already approved three home school organizations (the Pennsylvania Homeschoolers Accreditation Agency, the Erie County Homeschoolers and the Buxmont Christian Education Institute) as such, and it is staff’s understanding that the approval of additional similar organizations by the DE is under consideration. In addition, there is a statutory basis for providing an alternative procedure for students who do not receive their diplomas from an approved home school organization. This alternative procedure, as reflected in the proposed regulation change, is based on the compulsory attendance and home education program statutes, and will require verification by the school superintendent that the home schooled student has graduated from an approved high school.

*Section 121.32. Approved institutions in higher education grant program*—This section is proposed to be modified to incorporate a change in the name of an accrediting oversight organization. The Commission on Recognition of Postsecondary Accreditation (CORPA), was created as an interim oversight organization and has now disbanded and been replaced by the Council on Higher Education Accreditation (CHEA). The scope of oversight and membership field remain the same.

*Section 121.33. Approved program of study in higher education grant program*—This section is proposed to be

changed to decrease the portion of an approved program that must be completed by means of classroom instruction. The 75% requirement was implemented in the mid-1970’s to deal with “universities without walls” and other nontraditional programs. The current regulation serves to exclude most distance education programs of study activities, which involve the provision of educational services by means of telecommunications technologies, the use of which has grown tremendously within the past several years. The decrease in the percentage from 75 to 50% may be considered an interim step which recognizes this growth yet retains a measure of control over the extent of internships, on-the-job training, correspondence study and other forms of nonclassroom instruction until the educational community defines its position on this issue. It should be noted that the DE (which concurs with this proposed regulatory change) and the United States Department of Education require that at least 50% of an institution’s programs be resident based to operate in this Commonwealth and participate in Federal aid programs respectively.

*Section 121.42. Submission of applications*—This section is proposed to be modified to reflect a change of title from “Executive Director” to “President and Chief Executive Officer” as previously authorized by the Board.

*Section 121.48. Limitation on payment of grants*—This section is proposed to be modified to reflect a change of title from “Executive Director” to “President and Chief Executive Officer” as previously authorized by the Board.

*Section 121.56. Year Abroad Program*—This section is proposed to be modified to reflect a change of title from “Executive Director” to “President and Chief Executive Officer” as previously authorized by the Board.

#### *Loan Programs*

*Section 121.2. Citizenship*—This section is proposed to be updated to reflect the citizenship eligibility requirements for Federal Family Education Loan Program (FFELP) loans that are contained in current Federal regulations. Generally, to be eligible for a loan, a borrower shall be a United States citizen, United States national or an eligible noncitizen as described in paragraph (2).

*Section 121.9. Administrative loan collection review procedures*—This section is proposed to be amended to make reference to Non-Title IV loan collection procedures only. Any references to Title IV collections will be addressed in § 121.10 (relating to administrative wage garnishment procedures for Federal loans). Section 121.10 is proposed to be added to comply with the Federal Administrative Wage Garnishment procedures established by the United States Department of Education. Section 121.10 will only be applicable to Title IV loan collections.

#### *Early Childhood Education Professional Loan Forgiveness Program*

The Early Childhood Education Professional Loan Forgiveness Program, enacted in 1993, is intended to help stabilize and improve child-care services in this Commonwealth by forgiving up to \$2,500 annually (and up to a total of \$10,000) in Agency-administered student loan programs for qualified child-care professionals earning less than \$18,500 annually. While this program became effective in January, 1994, formal regulations have not previously been submitted to the Board due to the uncertainty of funding for this program. Although funding remains tenuous, proposed Subchapter N (relating to

early childhood education professional loan forgiveness program) is being proposed for adoption since the enabling Legislation remains in force regardless of the year-to-year funding issue. The subchapter reflects the Board-approved policies under which the program has been administered since enacted into law.

*Affected Parties*

The proposed amendments affect the applicants that apply for the benefits of these programs as well as other entities, such as schools, who participate in them.

*Fiscal Impact*

The proposed amendments should have no significant fiscal impact on the Commonwealth, its political subdivisions or the general public.

*Cost and Paperwork Estimates*

None of the proposed amendments affect costs or paperwork requirements already in place.

*Effective Date*

These proposed amendments will become effective upon final publication in the *Pennsylvania Bulletin*.

*Sunset Date*

The regulations as proposed will remain in effect indefinitely.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act, on March 16, 1998, the Agency submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Education Committees. In addition to submitting the proposed amendments, the Agency has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Agency in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of these proposed amendments, it will notify the Agency within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the proposed amendments, by the Agency, the General Assembly and the Governor of objections raised.

*Public Comment/Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Sheila Dow Ford, PHEAA Chief Counsel, Pennsylvania Higher Education Assistance Agency, 1200 North Seventh Street, Harrisburg, PA 17102-1444 within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

MICHAEL H. HERSHOCK,  
*President and Chief Executive Officer*

**Fiscal Note:** 58-23. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 22. EDUCATION**

**PART VIII. HIGHER EDUCATION ASSISTANCE AGENCY**

**CHAPTER 121. STUDENT FINANCIAL AID**

**Subchapter A. GENERAL PROVISIONS**

**§ 121.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

**Veteran**—A person who engaged in active service in the United States Army, Navy, Air Force, Marines or Coast Guard or was a cadet or midshipman at one of the service academies and was released under a condition other than dishonorable, or will be by June 30 of the academic year for which the application is made, or who was a National Guard or Reserve enlistee who [ **participated in Operation Desert Shield/Storm and was discharged from active** ] was activated for duty. ROTC students, cadets or midshipmen [ **at** ] currently attending the service academies, [ **National Guard or Reserve enlistees participating in Operation Desert Shield/Storm and not yet discharged from active duty,** ] National Guard or Reserve enlistees who were not activated for duty, or those currently serving in the United States Armed Forces and will continue to serve through June 30 of the academic year for which application is made are not considered veterans.

**121.2. Citizenship.**

To be eligible for a Federal Family Education Loan, a student or parent borrower shall be, on or before the date of filing the loan guaranty application, one of the following:

\* \* \* \* \*

(2) [ **In the United States for other than a temporary purpose and intending to become a permanent resident thereof; except that a student who is a permanent resident alien attending an educational institution outside the United States is not eligible to receive a Federal Stafford Loan or to have the parent of the student receive a Federal PLUS Loan on behalf of the student.** ] A permanent resident alien of the United States, a temporary resident who intends to become a United States citizen or resident, or a refugee in the United States for other than a temporary purpose. For the purposes of this paragraph, the United States includes the 50 states, the District of Columbia, Puerto Rico, Virgin Islands, Guam, American Samoa, the Trust [ **Territories** ] Territory of the Pacific Islands and the Northern Mariana Islands.

**§ 121.7. Notice of denial and preliminary review procedures.**

\* \* \* \* \*

(b) All appeals from [ **such** ] the decisions of the Agency staff will be reviewed initially by an Administrative Review Committee composed of staff personnel of the Agency designated by the [ **Executive Director** ] **President and Chief Executive Officer**. The Administrative Review Committee may grant eligibility in [ **such** ] cases



[ as ] it deems proper. This subsection supersedes 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

\* \* \* \* \*

**§ 121.8. Applicant and recipient appeals and hearings.**

\* \* \* \* \*

(d) The appeal may be heard by the Board of Directors or, at its direction, by a hearing examiner appointed by the [ **Chairman** ] **Chairperson** of the Board of Directors of the Agency or, in the event of the unavailability of the [ **Chairman** ] **Chairperson**, by the Vice [ **Chairman** ] **Chairperson** of the Board of Directors of the Agency from a list maintained by the [ **Executive Director** ] **President and Chief Executive Officer**. The hearing examiner or the Board of Directors will schedule the appeal promptly for hearing and give the applicant or recipient at least 7 days' notice of the hearing. The notice will specify the date, hour[ , ] and place of hearing.

\* \* \* \* \*

**§ 121.9. Administrative loan collection review procedures.**

\* \* \* \* \*

(b) **Administrative loan collection procedure for those loans which are held by the Agency and which are not reinsured by the United States Secretary of Education are as follows:**

[ (b) ] (1) \*\*\*

[ (1) ] (i) \*\*\*

[ (2) ] (ii) \*\*\*

[ (c) ] (2) \*\*\*

[ (d) ] (3) All hearings will be conducted by a hearing examiner appointed by the [ **Chairman** ] **Chairperson** of the Board of Directors of the Agency or, in the event of the unavailability of the [ **Chairman** ] **Chairperson**, by the Vice [ **Chairman** ] **Chairperson** of the Board of Directors of the Agency from a list maintained by the [ **Executive Director** ] **President and Chief Executive Officer** and will be held at the offices of the Agency in Harrisburg, Pennsylvania. The time of the hearing will be fixed by the Agency within a reasonable time, as soon as convenient, after the receipt of the borrower's response, allowing at least 15 days' notice to be given to the borrower and the borrower's attorney, if an attorney has entered an appearance on behalf of the borrower. Notice of the hearing will be sent to the borrower by the hearing examiner, specifying the time and place for hearing. If a borrower wishes to request postponement of a hearing, the borrower shall contact the hearing examiner and provide the hearing examiner with valid reasons for the request. The hearing examiner may approve or disapprove the request in the examiner's discretion.

[ (e) ] (4) \*\*\*

[ (1) ] (i) \*\*\*

[ (2) ] (ii) \*\*\*

[ (3) ] (iii) \*\*\*

[ (4) ] (iv) \*\*\*

[ (5) ] (v) \*\*\*

[ (f) ] (5) \*\*\*

[ (g) ] (6) The hearing examiner will have the following powers and duties:

[ (1) ] (i) \*\*\*

[ (2) ] (ii) \*\*\*

[ (3) ] (iii) \*\*\*

[ (4) ] (iv) \*\*\*

[ (5) ] (v) To provide copies of the report to the [ **Executive Director** ] **President and Chief Executive Officer** of the Agency and to the borrower or the borrower's attorney of record within 60 days of the hearing.

[ (h) ] (7) \*\*\*

[ (1) ] (i) \*\*\*

[ (2) ] (ii) \*\*\*

[ (3) ] (iii) \*\*\*

[ (4) ] (iv) \*\*\*

[ (5) ] (v) \*\*\*

[ (6) ] (vi) \*\*\*

[ (i) ] (8) The borrower and the [ **Executive Director** ] **President and Chief Executive Officer** of the Agency shall each have the right to file exceptions to the hearing examiner's report within 15 days after the service of a copy of the report. Failure to file exceptions within the time allowed shall constitute a waiver of all objections to the report.

[ (j) ] (9) Upon consideration of the record, the hearing examiner's report, and any exceptions and briefs filed by the borrower and the [ **Executive Director** ] **President and Chief Executive Officer** of the Agency, the Board of Directors will enter a final order.

[ (k) ] (10) \*\*\*

[ (l) ] (11) \*\*\*

[ (m) ] (12) Notice of the entry of a final order by the Board of Directors will be mailed promptly to the borrower at the borrower's last known post office address. The [ **Executive Director** ] **President and Chief Executive Officer** may transfer the record and the order of default to the court of common pleas of the district in which the borrower resides or, when residence within this Commonwealth cannot be ascertained, to the Court of Common Pleas of Dauphin County, to be entered as a judgment.

[ (n) ] (13) \*\*\*

[ (o) ] (14) \*\*\*

[ (1) ] (i) \*\*\*

[ (2) ] (ii) \*\*\*

[ (3) ] (iii) \*\*\*

[ (4) ] (iv) \*\*\*

[ (p) ] (15) This section affects 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) as follows:

[ (1) ] (i) Subsection (b)(1) supersedes 1 Pa. Code § 35.14 (relating to orders to show cause).

[ (2) ] (ii) Subsection [ (d) ] (b)(3) supersedes 1 Pa. Code §§ 35.105 and 35.185 (relating to notice of nonrulemaking proceedings; and designation of presiding officers). Subsection (d) supplements 1 Pa. Code § 31.26 (relating to service on attorneys).

[ (3) ] (iii) Subsection [ (e)(1)—(3) ] (b)(4)(i)—(iii) supplements 1 Pa. Code § 35.126 (relating to presentation by the parties); subsection [ (e)(4) ] (b)(4)(iv) supersedes 1 Pa. Code § 35.169 (relating to copies to parties and agency).

[ (4) ] (iv) Subsection [ (g)(1)—(3) ] (b)(6)(i)—(iii) supplements 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers); subsection [ (g)(4) ] (b)(6)(iv) supersedes 1 Pa. Code § 35.205 (relating to contents of proposed reports); subsection [ (g)(5) ] (b)(6)(v) supersedes 1 Pa. Code § 35.207 (relating to service of proposed reports).

[ (5) ] (v) Subsection [ (h) ] (b)(7) supplements 1 Pa. Code § 35.125 (relating to order of procedure).

[ (6) ] (vi) Subsection [ (i) ] (b)(8) supersedes 1 Pa. Code § 35.211 (relating to procedure to except to proposed report).

[ (7) ] (vii) Subsection [ (j) ] (b)(9) supplements 1 Pa. Code § 35.226 (relating to final orders).

[ (8) ] (viii) Subsection [ (l) ] (b)(11) supersedes 1 Pa. Code § 35.214 (relating to oral argument on exceptions).

**§ 121.10. Administrative wage garnishment procedures for Federal loans.**

(a) This section implements the Federal administrative wage garnishment process authorized under section 488A of the Higher Education Act of 1965 (20 U.S.C.A. § 1095a).

(b) Loan collection procedure for those loans which are held by the Agency and which qualify as loans under the Federal Family Education Loan Program (FFELP) are as follows:

(1) If the Agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the Agency, on which the United States Secretary of Education (Secretary) has paid a reinsurance claim, it will do so in accordance with the following procedures:

(i) The employer shall deduct and pay to the Agency from a borrower's wages an amount that does not exceed the lesser of 10% of the borrower's disposable pay for each pay period or the amount permitted by section 303 of the Consumer Credit Protection Act (15 U.S.C.A. § 1673) unless the borrower provides the Agency with written consent to deduct a greater amount. For purposes of subsection (b), the term "disposable pay" means that part of the borrower's compensation from an employer remaining after the deduction of any amounts required by law to be withheld.

(ii) At least 30 days before the initiation of garnishment proceedings, the Agency will mail to the borrower's last known address, a written notice of the nature and the amount of the debt, the intention of the Agency to initiate proceedings to collect

the debt through deductions from pay and an explanation of the borrower's rights.

(iii) The Agency will offer the borrower an opportunity to inspect and copy Agency records related to the debt.

(iv) The Agency will offer the borrower an opportunity to enter into a written repayment agreement with the Agency under terms agreeable to the Agency.

(v) The Agency will offer the borrower an opportunity for a hearing in accordance with subparagraph (x) concerning the existence or amount of the debt and, in the case of a borrower whose proposed repayment schedule under the Order of Withholding is established other than by a written agreement under subparagraph (iv), the terms of the repayment schedule.

(vi) The Agency will sue any employer for any amount that the employer, after receipt of the garnishment notice provided by the Agency under subparagraph (viii), fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

(vii) The Agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months.

(viii) Unless the Agency receives information that the Agency believes justifies a delay or cancellation of the Order of Withholding, it will send an Order of Withholding to the employer within 20 days after the borrower fails to make a timely request for a hearing, or if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the Agency to proceed with garnishment.

(ix) The notice given to the employer under subparagraph (viii) will contain only the information necessary for the employer to comply with the Order of Withholding.

(x) The Agency will provide a hearing which, at the borrower's option, may be oral or written, if the borrower submits a written request for a hearing on the existence or amount of the debt or the terms of the repayment schedule. The time and location of the hearing will be established by the Agency. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. Telephonic charges are the responsibility of the Agency.

(xi) If the borrower's written request is received by the Agency on or before the 15th day following the borrower's receipt of the notice described in subparagraph (ii), the Agency may not issue an Order of Withholding until the borrower has been provided the requested hearing. For purposes of this subsection, in the absence of evidence to the contrary, a borrower will be considered to have received the notice described in subparagraph (ii) 5 days after it was mailed by the Agency. The Agency will provide a hearing to the borrower in sufficient time to permit a decision to be rendered within 60 days.

(xii) If the borrower's written request is received by the Agency after the 15th day following the

borrower's receipt of the notice described in subparagraph (ii), the Agency will provide a hearing to the borrower in sufficient time that a decision may be rendered within 60 days, but may not delay issuance of an Order of Withholding unless the Agency determines that the delay in filing the request was caused by factors over which the borrower had no control, or the Agency receives information that the Agency believes justifies a delay or cancellation of the Order of Withholding. For purposes of this subparagraph, in the absence of evidence to the contrary, a borrower will be considered to have received the notice described in subparagraph (ii) 5 days after it was mailed by the Agency.

(xiii) The hearing examiner appointed by the Agency to conduct the hearing may be any qualified individual, including an administrative law judge, not under the supervision or control of the President and Chief Executive Officer of the Agency and have the following powers and duties:

- (A) To administer oaths.
- (B) To question witnesses presented by the Agency or by the borrower.
- (C) To hear evidence submitted, review the documents presented, consider arguments and prepare a report.
- (D) To recommend in the report a proposed adjudication and order, supported by findings of fact and conclusions of law.
- (E) To provide copies of the report to the President and Chief Executive Officer of the Agency and to the borrower or the borrower's attorney of record at the earliest practicable date, but not later than 60 days after the Agency's receipt of the borrower's hearing request.

(xiv) The proceedings of a hearing will be conducted in the following order:

- (A) The hearing examiner will state the purpose of the hearing, the procedure to be followed and the manner in which the report will be transmitted to the parties.
- (B) The borrower or the borrower's attorney will present the borrower's case.
- (C) The Agency may cross-examine each witness presented by the borrower.
- (D) The Agency will present its case.
- (E) The borrower or the borrower's attorney may cross-examine each witness presented by the Agency.
- (F) The hearing examiner may question any witness at any time.

(xv) The borrower and the President and Chief Executive Officer of the Agency will each have the right to file exceptions to the hearing examiner's report within 15 days after the service of a copy of the report. Failure to file exceptions within the time allowed constitutes a waiver of all objections to the report.

(xvi) The period of time may, for good cause, be extended upon motion made before the expiration of the 15-day time period and filed with the hearing examiner.

(xvii) The period of time may be extended upon motion made after the expiration of the 15-day time period if reasonable grounds are shown for failure to act. The motion shall be filed with the hearing examiner.

(xviii) Requests for the extension of time in which to file briefs shall be filed with the hearing examiner at least 5 days before the time fixed for filing such briefs.

(xix) Upon consideration of the record, the hearing examiner's report, and any exceptions and briefs filed by the borrower and the Executive Director of the Agency, the Board of Directors will enter a final order.

(xx) When the Board of Directors receives notice of an appeal, it will place the appeal on the meeting agenda of the Board when the Board has received a stenographic record of the hearing before the hearing examiner and has had the opportunity to review the record. The Board of Directors may delegate to the review committee, comprised of three or more Board members designated by the Chairperson of the Board, the responsibility to review the record and hearing examiner's report to the Board and to make a recommendation for action by the Board. The review committee will provide an opportunity for the borrower and the Agency to present oral argument, when requested by either party, before rendering a recommendation for action by the Board. Oral argument may be conducted either in-person or by telephone conference. Telephonic charges are the responsibility of the Agency. The Board of Directors will make a final order that is just and proper.

(xxi) Notice of the entry of a final order by the Board of Directors will be mailed promptly to the borrower at the borrower's last known post office address.

(xxii) As specified in section 488A(a)(8) of the Higher Education Act of 1965, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ or takes disciplinary action against the borrower due to the issuance of a Notice of Execution.

(2) References to "the borrower" in this section include all endorsers on a loan.

(3) This section affects 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) as follows:

(i) Subsection (b)(1)(ii) supersedes 1 Pa. Code § 35.14 (relating to orders to show cause).

(ii) Subsection (b)(1)(iii) supersedes 1 Pa. Code § 35.169 (relating to copies to parties and agency).

(iii) Subsection (b)(1)(v) supersedes 1 Pa. Code § 35.105 (relating to notice of nonrulemaking proceedings).

(iv) Subsection (b)(1)(x) supersedes 1 Pa. Code § 35.105.

(v) Subsection (b)(1)(xiii)(A)—(C) supplements 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers); subsection (b)(1)(xiii)(D) supersedes 1 Pa. Code § 35.205 (relating to contents of proposed reports); subsection (b)(1)(xiii)(E) super-

sedes 1 Pa. Code § 35.207 (relating to service of proposed reports).

(vi) Subsection (b)(1)(xiv) supplements 1 Pa. Code § 35.125 (relating to order of procedure).

(vii) Subsection (b)(1)(xv) supersedes 1 Pa. Code § 35.211 (relating to procedure to except to proposed reports).

(viii) Subsection (b)(1)(xvi)—(xviii) supersedes 1 Pa. Code § 31.15(a) (relating to extensions of time) and supplements 1 Pa. Code, Subchapter D (relating to motions).

(ix) Subsection (b)(1)(xix) supplements 1 Pa. Code § 35.226 (relating to final orders).

(x) Subsection (b)(1)(xx) supersedes 1 Pa. Code § 35.214 (relating to oral argument on exceptions).

SECONDARY SCHOOL GRADUATION

§ 121.21. Requirement for higher education grant applicants.

\* \* \* \* \*

(c) For purposes of the State Higher Education Grant Program, an approved secondary school shall also include any home education program that is accredited by any home schooling accreditation agency approved by the Department of Education. If the home education program lacks the requisite accreditation, certification by the appropriate local school official attesting that the home education program is in compliance with section 1327.1 of the Public School Code of 1949 (24 P. S. § 13-1327.1) shall be submitted to the Agency by the appropriate local school official.

EDUCATIONAL INSTITUTIONS

§ 121.32. Approved institutions in Higher Education Grant Program.

\* \* \* \* \*

(b) To be approved, an institution shall be other than a school of theology or a theological seminary as determined by the Agency, shall be located in the United States, the Canal Zone, Puerto Rico, the Virgin Islands, American Samoa or Guam and shall comply with the following:

(1) If the institution is a college or university located within this Commonwealth, the institution shall be approved by the Department of Education and shall be accredited or a recognized candidate for accreditation with an accrediting body recognized by the [Commission on Recognition of Postsecondary] Council for Higher Education Accreditation; if the college or university is located outside this Commonwealth, the institution shall be degree-granting, shall be operated not-for-profit and shall be fully accredited by the regional institutional accrediting body recognized by the [Commission on Recognition of Postsecondary] Council for Higher Education Accreditation responsible for accreditation in the state where the college or university is conducting its educational program.

\* \* \* \* \*

(3) If the institution is a trade, technical or business school located within this Commonwealth, the institution shall be approved by the Department of Education or shall currently be, and shall have been throughout the preceding 24 months, licensed by the State Board of Private Licensed Schools and shall be accredited by an

accrediting body recognized by the [Commission on Recognition of Postsecondary] Council for Higher Education Accreditation, except that this requirement for licensure and accreditation may be waived by the President and Chief Executive Officer for branch campuses of an institution that has been operating satisfactorily in this Commonwealth for 2 years or more; if the institution is located outside this Commonwealth, it shall be degree-granting, shall be operated not-for-profit and shall be fully accredited by the regional institutional accrediting body recognized by the [Commission on Recognition of Postsecondary] Council for Higher Education Accreditation responsible for accreditation in the state where the institution is conducting its educational program.

\* \* \* \* \*

§ 121.33. Approved program of study in Higher Education Grant Program.

To be eligible for a State higher education grant, an applicant shall enroll in a program of study approved by the Agency and offered by an institution approved by the Agency under § 121.32 (relating to approved institutions in Higher Education Grant Program) for participation in the State Higher Education Grant Program. An approved program of study shall comply with the following:

(1) An approved program of study shall be a program of instruction of at least 2 academic years which shall be the equivalent of at least 60 semester credit hours or at least 1,800 clock hours of instruction (1,500 clock hours in the case of programs leading to the associate degree in specialized technology or the associate degree in specialized business offered by institutions of higher education located within this Commonwealth) except that, other than for those community college programs which are measured in credit hours, programs not leading to a degree shall be measured in clock hours, with at least [45] 30 semester credit hours or [1,350] 900 clock hours earned through instruction within the classroom, and shall be presented over a calendar of at least 15 months.

(2) An approved program of study shall require that at least [75] 50% of the credits needed for completion of the program at the approved institution be earned through instruction within the classroom.

[ (3) An approved program of study shall be offered on a full-time basis and in such a way that a recipient completes the program in the period of time normally required for the completion of the program at other approved institutions. ]

[ (4) ] (3) \*\*\*

[ (5) ] (4) An approved program of study shall be on the approved list as of August 1 for the ensuing academic year. Approval after August 1 will become effective the following August 1 with two exceptions:

\* \* \* \* \*

(ii) In the light of the particular circumstances related to the approval of the program of study and the funding and application processing conditions of the Agency, the [Executive Director] President and Chief Executive Officer may make the approval effective on a date prior to August 1.

### Subchapter B. HIGHER EDUCATION GRANT PROGRAM

#### § 121.42. Submission of applications.

\* \* \* \*

(d) The [ **Executive Director** ] **President and Chief Executive Officer** may authorize the setting aside of deadlines for other categories of applicants when in the judgment of the [ **Executive Director** ] **President and Chief Executive Officer** the setting aside of the deadline will facilitate administration of the State Higher Education Grant Program in accordance with the policies established by the Board of Directors of the Agency and will promote equitable program results. Any determination made by the [ **Executive Director** ] **President and Chief Executive Officer** under this subsection will be reduced to writing, which writing will delimit the category and give an estimate of the number of applicants for the particular processing year which is expected to fall within the category. A copy of the writing will be furnished to each member of the Board of Directors of the Agency.

\* \* \* \*

#### § 121.48. Limitation on payment of grants.

The Agency will not make payment of, or further payment on, an existing State higher education grant on the basis of an inquiry or request received after August 1 of the calendar year next commencing following the academic year for which the payment is sought unless the [ **Executive Director** ] **President and Chief Executive Officer** specifically directs that payment be made in order to prevent grave hardship.

#### § 121.56. Year Abroad Program.

A recipient shall be eligible to receive an award for a Year Abroad Program which shall provide the recipient with equivalent credit for the academic [ **term or** ] terms involved in the program as the recipient would earn at the approved institution of higher learning and which requires the recipient to pay the educational costs to [ **such** ] the institution. Exceptions to the requirement that educational costs [ **must** ] be paid to the approved institution may be made by the [ **Executive Director** ] **President and Chief Executive Officer**.

*(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)*

### Subchapter N. EARLY CHILDHOOD EDUCATION PROFESSIONAL LOAN FORGIVENESS PROGRAM

Sec.

- 121.401. Application of existing agency regulations.
- 121.402. Qualified applicant.
- 121.403. Loan forgiveness.
- 121.404. Employment.
- 121.405. Approved child-care facility.
- 121.406. Lottery.

#### § 121.401. Application of existing agency regulations.

The following higher education grant regulations contained in Subchapters A and B (relating to general provisions and the State Higher Education Grant Program) apply to applicants in the Early Childhood Education Professional Loan Forgiveness Program except those provisions which are inconsistent with this subchapter:

- (1) Section 121.1 (relating to definitions).
- (2) Section 121.3 (relating to discrimination prohibited).

(3) Section 121.4(a) (relating to denial of eligibility to loan defaulters).

(4) Section 121.6 (relating to denial of eligibility for financial assistance).

(5) Section 121.7 (relating to notice of denial and preliminary review procedures).

(6) Section 121.8 (relating to applicant and recipient appeals and hearings).

#### § 121.402. Qualified applicant.

A qualified applicant in the Early Childhood Education Loan Forgiveness Program is a person who meets the following requirements:

(1) Has successfully completed an undergraduate program at an accredited college or university.

(2) Has a bachelor's degree and has obtained Pennsylvania State Early Childhood Education Certification (nursery through third grade), or an associate's degree in Early Childhood or Child Development.

(3) Has borrowed through the Agency-administered Guaranteed Student Loan Programs.

(4) Is a resident of this Commonwealth.

(5) Executes a sworn affidavit, under penalty of perjury, that he does not have a delinquent payment owing to any Commonwealth agency.

(6) Receives an annual salary of less than \$18,500 for the employment period for which loan forgiveness is requested.

(7) Has submitted a completed application by the filing deadline designated by the Agency.

#### § 121.403. Loan forgiveness.

Qualified applicants who are selected for the program in accordance with the Early Childhood Loan Forgiveness Act (24 P. S. §§ 7101—7106) are eligible for payment by the Agency of a portion of the debt incurred by the applicant through the Agency-administered Guaranteed Student Loan Programs for the education necessary to successfully complete the specified bachelor's degree or associate's degree programs. For each 12-month employment period designated by the Agency that the applicant is a full-time professional in an approved Commonwealth child-care facility, the Agency may forgive a proportional part of the applicant's loan so that the loan may be entirely forgiven over 4 years of full-time employment in an approved child-care facility. For a graduate with a bachelor's or associate's degree in the specified areas, no more than \$2,500 may be forgiven in any year, and no more than \$10,000 may be forgiven for any applicant. Payments shall be made in accordance with the procedures established by the Agency. A loan forgiveness award may not be made for a loan that is in default at the time of the application.

#### § 121.404. Employment.

An applicant selected for the Early Childhood Education Professional Loan Forgiveness Program is required to submit documentation the Agency may require as proof that those child-care professionals are working as full-time professionals in approved child-care facilities in this Commonwealth for the 12-month employment period designated by the Agency for loan forgiveness. Each child-care professional is required to submit documentation of eligibility as the Agency may require.

**§ 121.405. Approved child-care facility.**

An "approved child-care facility" is defined as a child day-care center or group day-care home located in this Commonwealth which is subject to and in compliance with 55 Pa. Code (relating to public welfare).

**§ 121.406. Lottery.**

(a) Loan forgiveness awards shall be made to the extent that funds are appropriated by the General Assembly and are sufficient to cover administration of the program. If funding is insufficient to fully fund administration and eligible applicants, the Agency shall utilize a random lottery system for determining which applicants receive loan forgiveness awards.

(b) When a random lottery is required, the lottery shall include only those records that are complete and eligible in accordance with Agency requirements at the time the lottery is conducted.

[Pa.B. Doc. No. 98-485. Filed for public inspection March 27, 1998, 9:00 a.m.]

**PUBLIC SCHOOL  
EMPLOYEES' RETIREMENT  
BOARD**

[ 22 PA. CODE CHS. 201, 211, 213 AND 215 ]

**General Revisions; Contributions; Credited Service**

*Purpose of the Proposed Amendments*

Under Executive Order 1996-1 the Public School Employees' Retirement Board (Board) has undertaken a review of its existing rules and regulations. Based on that review, the Board proposes a number of technical and several substantive amendments to its rules and regulations to read as set forth in Annex A.

*General Comments*

1. *Gender neutral language.* The proposed amendments have not been comprehensively updated since 1975, and generally use the masculine tense. The proposed changes rewrite, where applicable, to gender neutral language.

2. *Deletions of language in the Code.* Generally, where the regulatory provisions merely repeat or restate language already contained in 24 Pa.C.S. §§ 8101—8534 (relating to Public School Employees' Retirement Code) (code), the language was deleted as unnecessary.

*Section by Section Analysis*

§ 201.1 The proposed amendments add some provisions which may streamline an administrative hearing, and which differ from the General Rules of Administrative Practice and Procedure.

§ 201.2 *New section*, providing for an expedited hearing and decision when there are no factual disputes. This expedited hearing must be agreed to by both sides, and would allow the case to go directly to the Board for adjudication.

§ 201.3 *New section*, adopting preliminary objections and motions practice as provided in the Rules of Civil Procedure. These sections would allow more flexibility in dealing with cases which have no factual disputes.

§ 201.4 *New section*, requiring hearing examiner to dismiss case when claimant does not appear at hearing without good cause. Currently, the hearing examiners usually dismiss the case after a motion filed by the Public School Employees' Retirement System (System). These amendments would simplify the procedure.

§ 201.5 *New section*, allowing letter briefs instead of formal briefs, when the argument is no more than 3 pages. This procedure will simplify the argument process.

§ 211.1 Technical corrections

§ 211.2 Definitions

A. General Comment—deleted definitions merely repeat the code definitions.

B. Active Member—adds language to conform to Act No. 31 of 1983, which added the concept of pickup contributions, and to conform to Act No. 112 of 1992, adding service as a collective bargaining organization as an approved leave of absence. Deletes reference to workers' compensation as required by *Rowan v. SERS*, Pa.Cmwlth., No. 3377 C. D. 1995, filed 11/15/96, a decision equally applicable to the System.

C. Basic Contribution Rate—change to conform to Act No. 31 of 1983, amending the rate.

D. Beneficiary—technical corrections

E. Compensation—technical corrections

F. Date of Termination of Service—clarifies that an inactive member can remain so only for 2 years after the last date service was performed, as required by Act No. 31 of 1983.

G. Government Service—added because of Federal act known as USERRA (Uniformed Services Employment and Reemployment Act), which establishes various conditions for the purchase of military service.

I. Inactive Member—clarifies that the inactive member period is 2 school years rather than 2 calendar years.

J. Valuation Interest—deleted because this is no longer used by the system.

§ 211.3 No change.

§ 211.4 No change.

§ 213.1 Deletion of outdated provisions

§ 213.2

A. Computation—deletion of 1,100 hour standard for full time employes, as required by *Commonwealth of Pennsylvania, Public School Employees' Retirement System v. Pennsylvania School Boards Association, Inc.*, 682 A.2d 291 (Pa. 1996).

B. Approved Leave of Absence—proposed change to conform to Act No. 112 of 1992.

§ 213.3 Technical corrections

§ 213.4

A. Purchase limitations for Military Service—clarifies that a member may not double dip on military and System benefits.

B. Nonschool Service—clarifies that credit may be obtained for fractional periods beyond 1 year.

C. Service as Cadet Nurse—proposed addition to conform to Act No. 23 of 1991.

D. Service as County Nurse—proposed addition to conform to Act No. 226 of 1985.

§ 213.5 Deletes language repetitive of code

§ 213.5 Technical corrections

§ 213.6 Technical corrections

§ 213.7 Clarifies that a member must have at least one eligibility point, rather than a year of school service, to qualify for an annuity. The clarification is more consistent with the code's use of eligibility points in section 8306 of the code (relating to eligibility points).

§ 213.8 Deletes language repetitive of code

§ 213.9 Technical corrections

§ 213.10 Technical corrections

§ 213.21 Deletes outdated language

§ 213.22 Technical corrections

§ 213.23 Adds activated military service as an item of purchasable credit, to conform to Act No. 23 of 1991.

§ 213.24

A. Nonintervening Military Service—adds proposed language allowing purchase over a 5 year period without interest, as required by USERRA.

B. Activated Military Service—adds proposed language allowing purchase, as required by USERRA.

§ 213.25 Clarifies that a member's estate may complete payments of purchasable service by either lump sum or actuarial reduction of the benefit.

§ 213.26 Deletes outdated language

§ 213.27 Technical corrections

§ 213.28. No change

§ 213.29 No change

§ 213.30 Deletes outdated language

§ 213.41 Technical corrections

§ 213.42 Deletes outdated language

§ 213.43 No change

§ 213.44 Clarifies that a member whose disability is terminated can either receive an annuity or vest the benefit.

§ 213.46 Technical corrections

§ 213.47 Technical corrections

§ 213.48 No change

§ 213.49 Technical corrections

§ 215.1 No change

§ 215.2 Technical corrections

§ 215.3 Deletes language repetitive of the code

§ 215.4 Deletes language repetitive of the code

§ 215.5 Deletes language repetitive of the code, as well as makes technical corrections

§ 215.6 Deletes language repetitive of the code, as well as makes technical corrections

§ 215.7 Deletes language repetitive of the code, as well as makes technical corrections

§ 215.8 Deletes language repetitive of the code

§ 215.21 Deletes language repetitive of the code

§ 215.22 No change

§ 215.23 Technical corrections

§ 215.24 No change

§ 215.31 Deletes language repetitive of the code

§ 215.32 No change

§ 215.33 Technical corrections

§ 215.34 Deletes language repetitive of the code

§ 215.35 Deletes language repetitive of the code, as well as makes technical corrections

§ 215.36 Technical corrections

#### *Statutory Authority*

The Board's authority to promulgate rules and regulations for the uniform administration of the system is set forth in section 8502(h) of the code (relating to administrative duties of board). The Board has promulgated rules and regulations in Chapters 201, 211, 213 and 215. The proposed rulemaking consists of technical and substantive amendments to the Board's existing rules and regulations.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 18, 1998, the Board submitted a copy of the notice of proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Education Committee and the Senate Finance Committee. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the amendments.

#### *Fiscal Impact and Paperwork Requirements*

The proposed amendments do not impose increased costs or increased paperwork requirements on the Commonwealth, local governments, the private sector or the general public.

#### *Persons Affected*

The proposed amendments affect all active and inactive System members, public school employers and retirees.

#### *Effective Date*

The amended rules will be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

#### *Sunset Date*

A sunset date is not being established for these amendments because they are necessary for the administration of the substantive provisions of the code. The Board will closely monitor these regulations for their effectiveness.

#### *Public Comments*

Interested parties are invited to submit written comments, suggestions or objections regarding the proposed amendments to Frank Ryder, Director, Government Rela-

tions, Public School Employes' Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17101, within 30 days following the publication of the proposed amendments in the *Pennsylvania Bulletin*.

JAMES A. PERRY,  
Secretary

**Fiscal Note:** 43-7. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 22. EDUCATION**

**PART XIII. PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

**CHAPTER 201. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE**

**§ 201.1. Applicability of [ general rules ] the General Rules of Administrative Practice and Procedure.**

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) [ are ] is applicable to the activities of and proceedings before the [ Public School Employes Retirement Board ] Board except as provided in this chapter.

**§ 201.2. Expedited disposition process.**

When the claimant and System agree that no facts are in dispute, they may agree to submit the case directly to the Board for adjudication. Under these circumstances, only the claimant will file a brief in support of claimant's position. The Board will issue a proposed adjudication, to which the claimant may file exceptions. If no exceptions are timely filed, the Board will issue a final adjudication adopting the proposed adjudication. If exceptions are filed, the Board will consider the exceptions when rendering its final adjudication.

**§ 201.3. Motions practice.**

(a) *Preliminary objections.* The System may, before filing an answer, file preliminary objections directly with the Board. The preliminary objections shall conform to Pa.R.C.P. No. 1028 (relating to preliminary objections).

(b) *Summary judgment.* Either the System or the claimant may file a motion for summary judgment directly with the Board. The motion shall conform to Pa.R.C.P. Nos. 1035.1—1035.4.

**§ 201.4. Dismissal for nonappearance.**

Whenever a claimant fails to appear, either in person or through counsel, for a scheduled hearing without good cause, the hearing examiner will issue a recommendation to dismiss the case, without considering the merits of the claim.

**§ 201.5. Letter briefs.**

Both the claimant and the System shall be entitled to file letter briefs to the hearing examiner. The letter briefs need not conform to 1 Pa. Code §§ 35.191 and 35.192 (relating to proceedings in which briefs are to be filed; and content and form of briefs), but the letter briefs may not be more than 3 pages in length.

**CHAPTER 211. PRELIMINARY PROVISIONS**

**§ 211.2. Definitions.**

The following words and terms, when used in this part, have, consistent with the code definitions, the following meanings, unless the context clearly indicates otherwise:

*Accumulated deductions*—The total of **pickup** contributions paid into the fund by the member, on his [ own ] account [ and for the share of the employer, to the extent applicable, for ] of previous school service, current school service, or creditable nonschool service, as well as the statutory interest credited on those contributions.

*Active member*—A school employe [ who is contributing to the fund or for whom authorized ] for whom **pickup** contributions are being made [ thereto ] to the fund, including those granted a sabbatical leave of absence, or who are on an approved leave of absence for professional study [ or ], as an exchange teacher, or service with a collective bargaining organization, under the applicable provisions of the code. [ It shall also include those receiving workman's compensation. ] It shall exclude employes who are on leave of absence without pay, although the leave may entitle the employe to statutory interest as elsewhere provided under law.

\* \* \* \* \*

*Annuitant*—A member on or after the effective date of retirement, until [ his ] the annuity is terminated, but excludes a beneficiary or survivor annuitant.

*Basic contribution rate*—A rate of [ 5.5% ] **6.25%** on compensation received by the member during school employment. The rate shall be inapplicable for an active member of Class T-A or T-B, who shall pay at the rate based on sex and age upon entry into [ such ] that class of service. All other members shall pay the basic contribution rate of [ 5.5% ] **6.25%** of compensation received, except for purchase of previous service. It shall be applicable to those in the joint coverage group, except that the appropriate offset factor shall be deducted on earnings covered by Federal Social Security. [ From and after July 1, 1976, the basic contribution rate shall be 5.25% of compensation received. ]

*Beneficiary*—The person last designated by a member in writing to the Board on forms [ it supplies, ] supplied by the Board to receive [ his ] accumulated deductions or a lump sum benefit upon [ his ] death. If [ one ] a beneficiary is not so designated, or if the beneficiary predeceased the member, the recipient shall be the estate of the member or those persons listed as next of kin eligible to receive employe benefits from an employer, under 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors), to the extent applicable.

\* \* \* \* \*

*Compensation*—[ Excludes ] **Pickup contributions plus any remuneration received as a school employe, excluding** a bonus, severance payment or other remuneration or similar emoluments received by a school employe during [ his ] school service not based on the standard salary schedule for which [ he ] the employe is rendering service. It shall exclude payments for unused sick leave, unused vacation leave, bonuses for attending



school seminars and conventions, special payments for health and welfare plans based on the hours employed or any other payment or similar emoluments which may be negotiated in a collective bargaining agreement for the express purpose of enhancing the compensation factor for retirement benefits.

*Date of termination of service*—The last day of service for which [a member makes] pickup contributions are made for an active member, or in the case of an inactive member [on leave without pay], the date of [his] resignation or the date the employer formally discontinues [his] employment or 2 years following the last date of service for which contributions were made, whichever is earliest.

*Effective date of retirement*—The first day following the date of termination of service, if application[, ] for an annuity is timely filed[, ]; but, if not timely filed, the date of actual filing or date specified on the application, whichever is later. In the case of a vestee, it shall mean the attainment of superannuation age, if filed within 90 days thereof, otherwise the date of actual filing, and, in the case of a disability benefit, the date certified by the Board.

*Employer*—[Governmental] A governmental entity directly responsible for the employment and payment of the school employe and charged with the responsibility of providing public education within this Commonwealth. The term includes entities whose employes under prior law and regulations[, ] are members of the System as of the effective date of the code.

*Final average salary*—In the case of a part-time employe, [his] compensation shall be annualized by multiplying [his] actual earnings by the reciprocal of the fractional portion of time worked during nonoverlapping periods of 12 consecutive months or equivalent consecutive pay periods during which compensation is received; and, in the case of a member with multiple service credit, the salary shall be determined by reference to include compensation received [by him] as a school employe or a State employe or both.

\* \* \* \* \*

*Government service*—Service as an administrator, teacher or instructor in the field of public school education for an agency or department of the government of the United States.

*Inactive member*—A member for whom no pickup contributions are being made, who has accumulated deductions standing to the member's credit in the fund and for whom no pickup contributions have been made within the last 2 school years or a multiple service member who is active in the System. The term also includes [A] a member who is on furlough and has elected to leave [his] the accumulated deductions in the fund at statutory interest during the furlough period, which period [shall] may not exceed 2 school years; or a member who is on leave of absence without pay.

*Member's annuity*—An amount determined by dividing the accumulated deductions of the member by the cost of a \$1 annuity based on the [sex and] nearest age of the Member at the effective date of retirement and computed on the basis of statutory interest and mortality tables adopted and used by the Board.

*Nonprofessional members*—School employes who are not professional members and who also qualify for [the] membership in the System under section 8301 of the code (relating to mandatory and optional membership).

\* \* \* \* \*

*Public school*—All classes or schools within this Commonwealth conducted under the order and superintendence of the Department of Education, including: educational classes of an employer charged with the responsibility of public education within this Commonwealth as well as those classes financed wholly or in part by the Federal Government, State-owned colleges and universities, the Pennsylvania State University, community colleges, area vocational-technical schools, intermediate units, the State Board of Education, Scotland School for Veterans' Children, Thaddeus Stevens State School of Technology and the Pennsylvania State Oral School for the Deaf. In all cases of doubt, the Board will determine whether any particular governmental entity is eligible as an employer within the meaning of the code.

*Salary deductions*—The amounts certified by the Board to be deducted from the compensation, as determined for retirement purposes, of an active member and paid into the fund for the purposes of purchasing current service, previous school service, pickup contributions and creditable nonschool service, as the case may be.

*School employe*—A person engaged in work relating to a public school for any governmental entity and for which work the person is receiving regular remuneration as an officer, administrator or employe. The term does not include an independent contractor or a person compensated on a fee basis. In all cases of doubt, the Board will determine whether a person is a school employe within the meaning of the code. It may also determine whether a person is an independent contractor or a person compensated on a fee basis upon review of all the circumstances surrounding the employment of the person seeking membership in the program. A person who is rendering services to the school district on a commission or fee basis, whether an elected official or not, is not a school employe for retirement purposes.

*School year*—[In no event shall a] The 12-month period which the governmental entity uses for purposes of administration, regardless of the actual time during which a member renders service. A member will not be credited, during a school year, with credited service in excess of [one] 1 year.

\* \* \* \* \*

[Valuation interest—Interest at 5.5% per annum compounded annually to be used for purposes of determining employer liabilities and contribution rates.]

*Vestee*—[A member with ten or more eligibility points who has terminated school service and has left his total accumulated deductions in the fund to defer receipt of an annuity. In the event the] A member with ten or more eligibility points who has terminated school service, left accumulated deductions in the fund and is deferring the filing of an application for receipt of an annuity. When a vestee applies for an annuity, [it] the annuity shall take

effect upon filing of the application, or the date specified on the application, whichever is later.

**CHAPTER 213. CONTRIBUTIONS AND BENEFITS  
GENERAL PROVISIONS**

**§ 213.1. Mandatory and optional membership.**

Membership shall be mandatory, as of the effective date of school employment, for all school employes, except the following categories:

\* \* \* \* \*

(2) A person employed on a per diem or hourly basis for less than 80 full-day sessions or 500 hours in any fiscal year. In all cases, a school district shall report to the Board whether a school employe annually qualifies under this section based on the service rendered during any school year[, **commencing with the 1975-76 school year, that is July 1, 1975, and every school year annually commencing thereafter.**] Any per diem or hourly school employe employed for less than the minimum eligibility requirements established in this paragraph [ **shall** ] is not [ **be** ] eligible for membership for that fiscal year period, but shall, if [ **he** ] the employe exceeds the minimums stated in this paragraph, be a mandatory member for that fiscal year period only.

(3) Employes in Federal programs shall conform with the following:

\* \* \* \* \*

(ii) [ **School employes in such programs, who have not joined the System, may elect to join the System and obtain credit for all service rendered from December 22, 1965, and prior to July 1, 1975, provided they elect to join within 120 days after the effective date of the code, which election shall require the employe to commence membership and pay for such service from the original date of eligibility. Such original date of eligibility and membership in the system shall continue until the termination of school service. The contributions required to purchase such service shall be as provided in §§ 213.21—213.30 (relating to contributions).**

(iii) [ From and after July 1, 1975, [ **any** ] an employe entering school service shall be required to join the System until termination of service, although the program in which he is employed is financed, in whole or in part, by the Federal government.

**§ 213.2. Credited school service.**

(a) *Computation.* For the purposes of computing credited school service, the following conditions [ **shall be applicable** ] apply:

(1) A full-time salaried employe shall receive 1 year of credited service for each nonoverlapping period of 12 consecutive employable months for which [ **he** ] the employe contributes for at least 180 full-day sessions [ **or 1100 hours** ] of employment. A full-time salaried employe may not be eligible to earn more than 1 year of credited service during any period of 12 consecutive months although [ **he** ] the employe may be employed for full-day sessions or for hours in excess of the limitations [ **set forth** ] in this section.

(2) A part-time salaried employe, that is, one who is compensated [ **on a part-time basis** ] as a percentage of

annual salary, shall receive credited service based on the proportion of full-time service for which [ **he** ] the employe is employed during a school year.

\* \* \* \* \*

(5) Any member with credit for multiple service or with credit in [ **either** ] the School Employees' Retirement program [ **or the State Employees' Retirement program** ], who is employed on a concurrent basis, in one or more districts or with this Commonwealth, [ **shall** ] is not [ **be** ] entitled to more than [ **one** ] 1 year of credited service for any consecutive 12-month period.

\* \* \* \* \*

(b) *Approved leaves of absence.* Credited service shall be granted to an active member for an approved leave of absence [ **for either sabbatical leave or for professional study and growth or as an exchange teacher** ] as authorized under the applicable provisions of the code. Members may be granted other types of leaves of absence[, **not within the aforementioned categories**] authorized by the code, but [ **such** ] these leaves [ **shall** ] do not entitle the member to any credited service during the period of the leave. Credited service for the approved leaves of absence shall be granted under the following conditions only:

\* \* \* \* \*

(2) Proper current contributions, based on the salary as if [ **he** ] the member had been in regular full-time employment during the period of the leave are made by the member and by the employer if required. An employer [ **shall** ] is not [ **be** ] permitted to suspend the requirement of making its required contributions during the period of the leave. Current contributions made by the member during the period of the leave shall be transmitted through the school district on a monthly basis in the same manner as active members.

(c) *Cancellation.* In all cases [ **where** ] when a member withdraws [ **his** ] accumulated deductions, all [ **of his** ] credited service shall be cancelled. Any member who has so withdrawn [ **his** ] accumulated deductions and has [ **his** ] credited service cancelled shall, upon a re-entry into the system, be eligible to purchase [ **such** ] the service under [ **the provisions of** ] section 8303 of the code (relating to eligibility points for retention and reinstatement of service credits).

(d) *Improperly credited service.* If the Board finds that any school service has been improperly credited, it will [ **cause such** ] cancel the credit [ **to be cancelled** ] and refund to the member any accumulated deductions attributable thereto [ **refunded to the member** ].

**§ 213.3. Eligibility points for retention and reinstatement of service credits.**

\* \* \* \* \*

(b) Every active member or multiple service member who is active in the State system, on or subsequent to March 1, 1974, may purchase credit upon which eligibility points shall be applied, as a member of Class T-C for any periods of previous school service or permissible creditable nonschool service, as provided in this part, on the condition that the member pay for [ **such** ] the service as provided in this part. Any active member or multiple service member seeking to reinstate previous service shall be required to purchase and pay for all [ **such** ] the

service previously credited **[ and pay for same ]**. **[ Such ]** The member **[ may ]** is not **[ be ]** permitted to purchase only a portion of previously credited service to be reinstated.

(c) In all instances **[ where ]** when creditable school or nonschool service may be purchased, **[ any ]** an active member, **[ by application, electing ]** having elected to purchase **[ such ]** the service, **[ may ]** is not **[ be ]** permitted to cancel the purchase **[ thereof ]** once payment has been made by lump sum, or **once** the member has agreed, in writing, to payroll deductions upon **[ such ]** the terms and conditions as provided in this part.

**§ 213.4. Creditable nonschool service.**

(a) Creditable nonschool service may be purchased only by an active member or a multiple service active member of the State Employees' Retirement System **[ or one who had been an active member on or subsequent to March 1, 1974, provided that those members in the latter class, or who elect to purchase this service shall be required to make payment only by lump sum within 90 days after certification of amount due, whereupon the appropriate benefit adjustments shall be made. Members of this class will not be permitted to make payment by salary deductions ]**.

\* \* \* \* \*

(c) Intervening military service shall be service of an active nature rendered to the armed forces of the United States for which an active member had **[ his ]** school service interrupted so that **[ he ]** the member could serve voluntarily or otherwise to fulfill a draft obligation in time of war or armed conflict. Intervening military service will be disallowed or cancelled when the required military tour of duty has been voluntarily extended beyond the time of military obligation, with or without the implied or express consent of the employer.

\* \* \* \* \*

(e) Purchase limitations for intervening and nonintervening military service and conditional credit shall be as follows:

(1) An active member may **not** purchase intervening or nonintervening military service, **[ although he may be ]** **if the member has obtained credit and is eligible effective as of \_\_\_\_** *(Editor's Note: The blank refers to the date of adoption of this proposal)* **or in the future** to receive a pension for this service from another employer or governmental agency **[ , on a conditional basis. If an active member purchases this conditional service, he ]** **Upon application to purchase this service, the member shall [ , upon eligibility to receive a benefit from this system, ]** be required to submit proof as to **[ his ]** eligibility or ineligibility for **[ any ]** pension benefits from the other employer or governmental agency, as the Board may require. If the Board determines that **[ the member purchasing this conditional credit ]** this service is **[ eligible to receive the other benefit, ]** **ineligible, the application will be denied. If the Board later determines that the purchased service should have been ineligible,** it will cancel the service purchased and refund to the member the accumulated deductions attributable to this service at the time of

retirement or termination of service, unless cancellation and refund is requested prior thereto. **[ A conditional purchase of service member may be required to sign documents the Board may require to insure that he is not receiving an annuity benefit contrary to the prohibitions of the code. The Board may also require from the member or the employer or agency from which he may be entitled to receive a benefit, documentation to determine whether the member is entitled to the service credit or to a refund of his accumulated deductions. ]** If subsequent to retirement, the Board learns that a member has falsified **[ his ]** a record, it may take action as is otherwise provided in the code.

(2) **[ An active member is not eligible for credit for nonintervening military service if this service entitles him to receive now or in the future, or if he is receiving, a governmental pension based on this nonintervening military service, irrespective of the fact that the member may have actual service in excess of the minimum amount necessary to qualify him for a Federal pension.**

(3) **[ Conditional credit for nonintervening military service shall be available for all active military service actually rendered for which purchase shall be requested but, may not exceed 5 years of [ such ] service, if the member has 3 years of credited school service subsequent to the military service for which credit is requested.**

(f) Nonschool service may be purchased by an active member who was a teacher or instructor in a public school or public educational institution in a state other than this Commonwealth or in a territory or area under the jurisdiction of the United States and this service may also be purchased by any active member who was an administrator, teacher or instructor in the field of public school education for any agency or department of the United States Government whether under its jurisdiction or not. **The nonschool service rendered shall be at least 1 full year. The total service purchased may not exceed 12 years or the number of years of school service credited in the system, whichever is less.**

(g) **Nonschool service in the Cadet Nurse Corps may be purchased by an active member for any period of training as a student or graduate nurse under a plan approved under section 2 of the act of June 15, 1943 (Pub. L. No. 78-73, 57 Stat. 153), if the total period of training under the plan was at least 2 years, and the credit for the service does not exceed 3 years.**

(h) **Previous nonschool service as a nurse in the employ of a county may be purchased by an active member as follows: For every 3 years or major fraction thereof in previous work experience, an individual may buy 1 year of creditable service, not to exceed a total of 5 years. The purchase of this service shall begin within 3 years of the employee's eligibility to purchase this creditable service.**

**[ (g) ] (i) \* \* \***

**(h) The nonschool service listed in subsection (f) shall be for a period of at least 1 school year provided that the total credit for this service shall be the lesser of 12 years or the number of years of school service credited in the system. The service sought to be purchased under this section shall be in no less increments than 1 year, based on each**

**year of school service credited in the school system up to a maximum of 12 years. ]**

**[ (i) ] (j)** The total credit for nonschool service, identified in subsections (a)—**[ (f) ] (i)**, may not exceed the actual number of years of school service in the System, rendered within this Commonwealth, plus, in the case of an active multiple service member, any additional years of State service rendered in the Commonwealth and credited in the **[ State Employes' Retirement ]** System. This limitation on total permissible nonschool service credit does not apply to the service provided in subsection **[ (g) ] (i)**.

**§ 213.5. Classes of service.**

**[ (a) ]** Class T-C membership shall be available to any school employe on the effective date of the code or who becomes a member of the System subsequent thereto.

**(b) ]** Members of Class T-B or T-A may, at any time prior to retirement, elect to convert **[ such ]** the membership into Class T-C, **[ provided ]** if they make the appropriate contributions as a member of this latter class. Any member of Class T-B or Class T-A may elect to become a full coverage member or elect to purchase credit for previous school or nonschool service **[ provided he ]** if the member converts **[ such ]** the membership to Class T-C and makes the appropriate contributions.

**§ 213.7. Eligibility for annuities.**

**[ In order to ]** To be eligible for any annuity payable under **[ the provisions of ]** the **[ law ]** code and **[ the rules and regulations promulgated thereunder ]** this part, a member **[ must ]** shall have at least **[ one full year of creditable school service ]** one eligibility point.

**§ 213.8. [ Eligibility for vesting ] (Reserved).**

**[ Any member terminating school service with ten or more eligibility points shall be entitled to vest his benefits until attainment of superannuation age. ]**

**§ 213.9. Eligibility for death benefits.**

In the event of the death of a member, **[ his ]** the member's beneficiary, or **[ the ]** estate, shall be entitled to death benefits if the member was eligible for an annuity in accordance with section 8307(a) or (b) of the code (relating to eligibility for annuities). If the deceased member is not eligible for an annuity, **[ his ]** the member's beneficiary or **[ his ]** estate, **[ as the case may be, ]** shall only be entitled to receive the accumulated deductions standing to **[ his ]** the member's credit in the fund. The Board may pay the next of kin, in the absence of a beneficiary, under the special circumstances provided in **[ section 3101 of the Probate, Estates and Fiduciaries Code ]** 20 Pa.C.S. § 3101 (relating to payments to family and funder directors).

**§ 213.10. Eligibility for refunds.**

**[ Any ]** An active member, upon termination of service, may elect to receive **[ his ]** the member's accumulated deductions in lieu of any benefit to which **[ he ]** the member would otherwise be entitled and **[ such ]** the

election shall constitute an irrevocable waiver of **[ such ]** this entitlement unless there is a subsequent return to and reinstatement of service.

**CONTRIBUTIONS**

**§ 213.21. [ Regular member contributions for current service ] (Reserved).**

**[ Every active T-C member shall make regular member contributions at the rate of 5.5% of his compensation for current service by salary deductions, provided that such contributions shall not be made by anyone other than the active T-C member except for authorized leaves of absence otherwise herein provided. Effective July 1, 1976, the contribution rate at 5.25% shall be imposed upon the compensation of every active T-C member. ]**

**§ 213.23. Member contributions for creditable school service.**

(a) An active member may purchase previous school service, sabbatical leave service, **activated military service** and full coverage membership. A State employe and a member of the **[ State Employes' Retirement ]** System may, if **[ he ]** the member elects multiple service, apply for and receive credit for total previous school service, **[ provided such ]** if the service is certified and **[ he ]** the member makes the required member contributions for the purchase of **[ such ]** the service, regardless of the amount of school service previously credited, if any.

(b) **[ The amount required for the purchase of creditable school service as defined in subsection (a) shall be sufficient to provide an amount equal to the accumulated deductions standing to the credit of the member, had he made regular member contributions with full coverage and had those contributions been credited with statutory interest during all subsequent periods of State and school service up to the date of purchase of such aforementioned service.**

(c) Those Active Members wishing to convert from either Class T-B or Class T-A membership to Class T-C shall pay an amount equal to the additional contributions, if any, which would have been made together with statutory interest thereon during all periods of subsequent school and State service up to the date of purchase, from and after July 1, 1950, in the case of members of Class T-B, and from and after July 1, 1967, in the case of members of Class T-A.

**[ (d) ] (c)** Those active members desiring to purchase credit for an approved leave of absence, other than sabbatical **and activated military service** leave, shall make contributions sufficient to transfer membership to **[ class ]** Class T-C, and to provide an annuity as a member of **[ such ]** that class for **[ such ]** that additional credited service, provided that the amount which shall be paid, shall be the sum of the amount required in subsection **[ (c) ] (b)**, depending upon the class from which the transfer is made, and the amount determined as the sum of the member's basic contribution rate and normal contribution rate as provided in section 8328 of the code (relating to actuarial cost method) during **[ such ]** the period, multiplied by the compensation which was or would have been received during **[ such ]**

the period, together with statutory interest during all subsequent periods of school and State service up to the date of purchase.

**[(e)] (d)** The payment for the purchase of all credit authorized by this chapter, except that for sabbatical leave **and activated military service leave**, shall be payable in a lump sum within 90 days after certification of the amount due or, in the case of an active member, may be authorized through payroll deductions over a period of years not in excess of 6 years, **[provided]** if statutory interest at 4% annually is charged through the repayment period. The amount certified by the Board for the purchase of the aforementioned credit shall be in accordance with methods approved by the actuary. **[This subsection shall apply and be effective only for applications for the purchase of credit received in the offices of the Board on or after May 1, 1978.]**

**§ 213.24. Contributions for purchase of credit for creditable school and nonschool service.**

(a) *Source of contributions.* As provided in sections 8303 and 8304 of the code (relating to eligibility points for retention and reinstatement of service credits; and creditable nonschool service), creditable school and nonschool service shall be purchased entirely by the member, except in the following cases:

(1) In the case of former uncredited school service, **[where] when** a school district has failed to credit service through administrative error, the employing school district, as **[such] the** employer, **[shall be]** is required to pay its share of the contributions for **[such] the** service, although the active member shall be responsible for **[his] the member's** share.

(2) In the case of service rendered by an active member to a county board of school directors, now designated an intermediate unit, the member shall only be responsible for the purchase of **[his own] the member's** share for **[such]** previous service rendered to the county board of directors.

(3) Except for sabbatical leaves of absence, in the case of approved leaves of absence **[for professional study and growth and as an exchange teacher]**, the employe shall be required to pay, for the purchase of creditable nonschool service, both the member's share and the employer's share if it is purchased after the leave of absence has expired. If the employer reports **[such] the** leaves currently based on the employe's salary as if **[he] the employe** had been in full-time employment during the leave period, **[then]** the employe **[shall] is** only **[be]** required to pay **[his] the employe** share, whereupon the employer shall have a corresponding liability based on normal contribution rate.

(b) *Contributions for purchase of nonintervening military service.* The amount due for the purchase of nonintervening military service shall be calculated in the following manner: The average of the first 3 years' salaries subsequent to **[such] the** military service, multiplied by the sum of the member's basic contribution rate and the normal contribution rate as determined by section 8328 of the code (relating to actuarial cost method) relating to Commonwealth and district shares, and multiplied by the number of years or fractional years of military service, **[and, finally, multiplying this product by compounded statutory interest during**

**all periods of school and State service rendered subsequent to the time of such military service to the date of total purchase.]** The amount due for the purchase of **[such] the** military service, as calculated **[above] under this subsection**, may be paid in a lump sum within 90 days after certification of the amount due, or in the case of an active member, may be amortized through payroll deductions over a **[one, two, but not more than 3 year period provided statutory interest at 4% is charged through the repayment period] period of years not in excess of five years without interest.** All amounts certified by the Board for the purchase of **[such] the** service shall be in accordance with methods approved by the actuary. In no event may nonintervening military service be purchased unless the active member has completed no less than **[three] 3** years of subsequent credited school service as a Class T-C member.

(c) *Contributions for purchase of intervening military service.* An active member eligible to purchase credit for intervening military service shall pay the amount due in accordance with the following formula: The member's basic contribution rate at the time of entry into **[such] the** active military service multiplied by **[his] the member's** then compensation and by years of **[such] the** military service together with statutory interest during all periods of subsequent school and State service to the date of purchase, provided that all **[such] the** amounts due shall be in accordance with methods certified and approved by the actuary. The amounts due for the purchase of **[such] the** service may be paid under any one of the following methods:

(1) Regular monthly payments submitted through the school district based on the compensation of the member which **[he] the member** would have received at the time of entry into active military service without statutory interest since **[such] the** payments are made on a current contributing basis.

\* \* \* \* \*

(3) Through amortized salary deductions over a **[one, two, but not more than 3-year period, provided statutory interest at 4% annually is charged through the repayment period] period of years not in excess of 5.**

\* \* \* \* \*

**§ 213.25. Incomplete payments.**

\* \* \* \* \*

(d) *Death of a member.* **[In the event]** If a member applies for the purchase of service and dies prior to certification of the amount due for **[such] the** service, **[then his] the member's** legally constituted representative may purchase **[such] the** service **either** by payment of a lump sum, within 30 days after **[such] the** certification is made, **or by reducing the annuity benefit by the actuarial equivalent of the debt, including statutory interest.**

**§ 213.26. [Contributions by the Commonwealth] (Reserved).**

**[(a) The Commonwealth obligation to make contributions, on behalf of active members based on total member payroll, shall be equal to 1/2 the rate**

certified by the Board, as determined by the actuary, necessary to provide the payment of prospective annuities in accordance with section 8328(a), (b), and (c) of the code (relating to actuarial cost method) except that, in those instances where an eligible school employe has elected membership in an optional alternate retirement plan, as provided in § 215.36 (relating to optional alternate retirement programs), the Board only certifies to the Commonwealth 1/2 the normal contribution rate and accrued liability rate which must be contributed to that optional alternate plan. The Commonwealth shall not be obligated to make any payment to the Board on behalf of that alternate plan, but the amount due, based on the normal contribution rate and accrued liability rate shall be paid directly to these plans.

(b) In the case of minimum and supplemental annuities provided in accordance with section 8328(d) of the code the Commonwealth shall contribute, on behalf of such annuitants, an amount equal to 1/2 the rate certified by the Board, as determined by the actuary based on total member payroll. ]

§ 213.30. Appropriations by the Commonwealth.

The Board will prepare and, through the Governor, submit annually to the General Assembly, an itemized budget consisting of the amounts necessary to be appropriated based on the actuarial cost method as certified by the actuary and presented to the Board. The sum of the various contribution rates established by the actuary, as certified by the Board, shall be applied to the total projected member payroll for the succeeding fiscal year. [ One-half of such amount shall be appropriated by the General Assembly so that the Commonwealth shall meet the obligations accruing during that fiscal year period for which the appropriation shall be made. The Commonwealth shall pay the amounts due on a quarterly basis through the Department of Revenue within 30 days of the receipt of the Board's requisition, and such amounts shall be paid by the State Treasurer. ]

BENEFITS

§ 213.41. Return of accumulated deductions.

Any member who elected to receive only [ his ] accumulated deductions, in lieu of any other benefit to which [ he ] the member would otherwise be entitled, shall, by [ such ] election, be deemed to have irrevocably waived entitlement to [ such ] other benefits except as otherwise provided [ in the event ] if a member returns to school service.

§ 213.42. [ Maximum single life annuity ] (Reserved).

[ From and after July 1, 1976, in the case of any member, including a vestee, who has attained age 55 and has 25 or more eligibility points, he shall be entitled to a lesser reduction in his annuity as provided in sections 8342(a) of the code (relating to maximum single life annuity). Any member lacking either of the above conditions shall not be eligible for such lesser reduction, but his annuity shall be subject to the normal reduction tables currently in effect. ]

§ 213.44. Disability annuities.

(a) Any member with at least [ five ] 5, but less than [ ten ] 10 years of credited school service shall be eligible, upon submitting appropriate medical evidence, to a disability annuity, but may not be entitled to elect any option on any portion of [ said ] the disability annuity. Any member entitled to a disability annuity, having ten or more eligibility points, [ shall be ] is entitled to select a joint and survivor option on that portion of the annuity to which [ he ] the member is otherwise entitled.

(b) Any disability annuitant no longer entitled to disability annuity in accordance with [ the provisions of sections ] section 8505(c)(2) or 8508(b) or (c) of the code (relating to duties of board regarding applications and elections of members), shall be entitled to either file an application for the election of optional modification of [ such ] the annuity to which [ he ] the annuitant would be otherwise entitled in accordance with section 8342 of the code (relating to maximum single life annuity) or vest the benefit, if [ he ] the annuitant has at least ten or more eligibility points. [ In the event ] If a disability annuity ceases and the member does not return to school service, [ he ] the member shall, if [ he ] the member has not already received on account of [ his ] the member's annuity the amount of [ his ] the accumulated deductions, be entitled to the difference upon application.

(c) Payments on account of disability shall be reduced by that amount by which the earned income of the annuitant, as reported in accordance with section 8505(b) of the code, [ relating to rights and duties of annuitants, ] for the preceding year together with the disability annuity payments for the year, exceeds the greater of \$5,000 or the last year's salary of the annuitant as a school employe, provided that the annuitant [ shall ] will not receive less than his member's annuity or the amount to which [ he ] the annuitant may be entitled under section 8342 of the code, [ relating to maximum single life annuity, ] whichever is greater.

§ 213.46. Termination of annuities.

\* \* \* \* \*

(c) *Emergency return to school service.* Any annuitant returning to school service in an emergency situation, as provided in section 8346(b) of the code and who works for a period in excess of [ 60 ] 95 days in any school year, shall suffer discontinuance of his annuity from the [ 61st ] 96th day of [ such ] service and the Board will make [ such ] the adjustment as the case may warrant.

(d) *Termination of annuitants—Independent contractor.* An annuitant may render service without discontinuance of an annuity if [ he ] the annuitant renders it in the capacity of an independent contractor for a sum certain and for a specific period of time, pursuant to a contract approved by the employer. The Board will have the right to determine whether the services to be performed [ are such as to ] warrant the conclusion that it is an independent contractor relationship. The Board may also inquire as to the circumstances surrounding an annuitant who seeks to render services as an independent contractor [ in order ] to determine whether [ such ] the relationship does exist, thereby entitling [ such ] the

person to [his] both an annuity and [his] the contractor or consultant fees simultaneously. In any case in which the Board finds that [such] the relationship may be contrary to the intent of this section, it will have the right to discontinue [such] the annuity or make [such] an adjustment as the circumstances warrant.

[ (e) Termination of annuitants—disability annuitant. (Reserved). ]

§ 213.47. Death benefits.

\* \* \* \* \*

(b) If a single life annuitant dies before receiving in monthly annuity payments the total amount of [his] the accumulated deductions, the balance of the total accumulated deductions less total annuity payments received shall be paid to [his] the designated beneficiary without regard to the actual proportion the employer's share represents to the total monthly annuity payments actually received before death.

§ 213.49. Payment of benefits.

\* \* \* \* \*

(b) If a beneficiary predeceases a member, or dies within 30 days of [his] the member's death, or if there is no valid beneficiary designation on file to take effect at death, any money payable from the account of the member shall be paid to the estate of the member or next of kin, under [the provisions of section 3101 of the Probate, Estates and Fiduciaries Code,] 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) as the case may be.

\* \* \* \* \*

CHAPTER 215. GENERAL ADMINISTRATION  
GENERAL PROVISIONS

§ 215.2. Administrative duties of the Board.

\* \* \* \* \*

(b) The Board will furnish, to the extent required by Federal law, information to members concerning those provisions of the Internal Revenue Code of [1954] 1986 (26 U.S.C.A. [§§ 1—904(2)]) which may impose a tax liability upon a member or beneficiary. The sole responsibility for [such] the tax liability, including the tax computation, is imposed upon the member and not the Board and the member should consult tax counsel or legal counsel for advice in these matters since the Board is not qualified or required to offer [same] the advice.

(c) [Pursuant to the provisions of] Under section 8502(g) of the code [(24 Pa.C.S. § 8502(g)),] (relating to administrative duties of board), an employer failing to comply with procedures as mandated in the code dealing with duties imposed upon employers, shall pay for the cost of performing these duties, [should] if the Board [initiate] initiates action to perform [same] the duties on behalf of the employer not doing so. [In the event] If an employer is delinquent in the payment of contributions in accordance with section 8327 of the code [(24 Pa.C.S. § 8327)] (relating to payments by employers), the Board [will] shall notify the Secretary of Education and the State Treasurer of [such] the delinquency for [such] the action as those officials are required to take [hereunder], consistent with the

billing and delinquency regulations [set forth] in § 213.27(a) (relating to payments by employers).

\* \* \* \* \*

(f) The Board will, in compliance with the percentage certifications in subsection (e), [bill the Commonwealth] determine within 30 days following the end of each quarter [for] the amount due based thereon, taking into consideration the member's total payroll and shall submit simultaneously therewith a requisition for [such] the amount [to the State Treasurer for payment] determined to be due from the Commonwealth.

(g) The Board will credit to the account of each member all amounts paid by [him] the member into the fund, including [his] the member's contributions for current service, payroll deductions for the purchase of service as otherwise provided in this [Part] part or lump sum payments for the purchase of service. No person or governmental employer [shall] may make payments on behalf of the member unless authorized by the code or this [Part] part. All member contributions shall be credited with statutory interest until the date of termination of service, except in the case of the vestee. In that event, statutory interest shall be credited until the effective date of retirement or until a return of [his] the accumulated deductions, if [he] the member so elects. In the case of a multiple service member, interest shall be credited to the member's accounts in each system until a termination of State or school service.

§ 215.3. [Duties of the Board to advise and report to the employers and members] (Reserved).

[ (a) On or before December 31 of each year, the Board will furnish a statement to each active contributing member showing the accumulated deductions standing to his credit as of the end of the previous fiscal year as well as the number of years and fractional parts of a year of service credited. Such statement will be mailed to the address of the active contributing member. The first statement mailed after the effective date of the code will not contain the name of the designated beneficiary but, upon subsequent written request by the member, it will appear on any subsequent statement. Such beneficiary designation may be deleted at any time and remain confidential upon the written request of the member. In no event will such information be divulged to any person other than the member and then only upon his written request.

(b) Whenever an active member or eligible school employe applies for purchase of credit for previous school or creditable nonschool service, the Board will bill the applicable employer, as the case may be, for its share in order to complete the purchase of such service. The employer's billing for such service shall be paid in a lump sum at the next quarterly pay cycle and credit shall be applied to the member accordingly. Failure of the employer to make the required payment timely shall cause a delinquency to occur and shall be treated accordingly.

(c) The Board will make available to all members information regarding benefits and options, including option 4, sufficient to apprise such members of same. ]

§ 215.4. [ Duties of the Board to report to the State Employees' Retirement Board—multiple service members ] (Reserved).

[ (a) *Multiple service membership of school employees.* Upon receipt of an application for membership in the System of a school employe who is a former State employe and who has elected multiple service membership, the Board will advise the State Employees' Retirement Board accordingly.

(c) *Multiple service membership of State employes.* Upon receipt of notification from the State Employees' Retirement Board that a former school employe has become an active member in the State Employees' Retirement System and has elected to receive credit for multiple service, the Board will so certify to the State Employees' Retirement Board and concurrently certify to the member the total credited service and fractional years thereof, as well as the annual compensation received each school year by the multiple service member for credited school service. Duplicate purchases of service under subsections (a) or (b) of this section will be prohibited in both the State Employees' Retirement System and this System.

(c) Any eligible multiple service member retiring from the State system or dying in service therein shall be entitled to a multiple service benefit, a portion of which is attributable to his school service. The Board will, therefore, certify to the State Employees Retirement Board the salary history and the final average salary to the multiple service member based on the highest compensation received as a State or school employe and the annuity or benefit to which the member or his beneficiary is entitled, as modified by any option, if applicable, for his school portion of the annuity.

(d) In the event a State employe, who is a multiple service member, is eligible for an annuity or dies in State service and was eligible for a benefit, the Board will transfer to the State Fund, no later than the end of the next quarter, the total accumulated deductions standing to the multiple service member's credit in this system and the actuarial reserve required to fund the school service benefit based on the compensation as determined by the final average salary in both systems. ]

§ 215.5. Duties of the Board.

(a) [ *General duties.* General duties of the Board shall include:

(1) The Board will, as soon as may be practicable, after each member joins the system, issue a statement, as to that member's aggregate length of total previous school and creditable nonschool service for which he may be eligible to purchase and receive credit.

(2) In the event an active member of the State system, elects multiple service membership and is receiving an annuity from the school System, his annuity will be discontinued retroactively to the date he becomes a member of the State system and any annuity payments received from this System subsequent to that date shall be restored to the fund, within 30 days from certification of the amount due.

(3) If a multiple service member is not receiving an annuity from the school System, having elected

multiple service membership, and has not withdrawn his accumulated deductions, the Board will continue or resume the crediting of statutory interest on such deductions.

(4) In the event such member has withdrawn his accumulated deductions, he will be required to restore to the fund by a lump sum payment within 90 days of certification of the amount due, the accumulated deductions at the time of his separation had he been a full-coverage T-C member together with statutory interest for all periods of subsequent State and school service to the date of repayment.

(b) ] *Application, elections [ , ] and disability annuities.* Duties of the Board regarding applications and elections of members and disability annuities shall include the following:

(1) Subsequent to the receipt of an application for a disability annuity based on physical and mental incapacity for the performance of a job for which the member is employed, the Board will, through its chief medical examiner, and [ **such other** ] **another** medical examiner as it may engage, cause the applicant to be examined; and on the basis of the medical evidence submitted, a recommendation shall be submitted to the Board stating whether a disability [ **or nondisability** ] should be granted, together with a report as to the permanency of the disability or the need for periodic examinations as well as the time interval for [ **such** ] **the** examinations. The Board will also establish an effective date of disability which shall be the day following the last day of compensation or the day the application is filed, whichever is later.

(2) Any disability applicant who is required by the Board to furnish additional medical documentation to support [ **his** ] **the** application, shall provide [ **same** ] **the documentation** within 30 days of [ **such** ] **the** request, or the Board may render the disability application null and void.

(3) The chief medical examiner, or [ **such** ] other medical examiners as the Board may engage, may recommend to the Board, on the basis of subsequent medical examinations, whether a disability annuitant should continue on disability or whether a finding of nondisability may be appropriate. In the latter event, the Board will establish the date of termination of disability, based on the recommendation of the medical examiner, whereupon the disability annuity shall be discontinued in excess of any annuity to which [ **he** ] **the member** may be otherwise entitled under section 8342 of the code [ **(24 Pa.C.S. § 8342)** ] **(relating to maximum single life annuity).**

(4) [ **In the event** ] **If** the Board denies a disability applicant for insufficient medical evidence, the applicant may still file, within 90 days after notification of [ **such** ] **the denial**, an application to vest or take an annuity, if the applicant is eligible [ **for same** ] **to apply.** [ **Such** ] **The** filing shall be considered timely, as of the original eligibility date, for the purposes of payment of other benefits or vesting, as the case may be.

(5) A disability annuity may also be subject to a disability annuity adjustment depending upon the earned income of the annuitant, as provided in section 8505(c)(3) of the code [ **(24 Pa.C.S. § 8505(c)(3))** ] **(relating to duties of board regarding applications and elections of members).**



**[(c)] (b) Refund to members.** [Duties of the Board and refund to members shall include the following:

(1) The Board will pay, to any member applying for a withdrawal of his accumulated deductions upon a termination of school service, the sum representing that amount, within 60 days after the application is filed or date of termination of service whichever is later, provided that the Board is in receipt of the required data to calculate the accumulated deductions due and owing such member.

(2) ] If the Board finds that a member is terminating service at the end of a school year intending to return the subsequent school year, following vacation periods, and to reinstate [his] accumulated deductions, [it] the Board may choose not to pay [such] the deductions in the first instance. The Board may require certification from the employer that [such] the events are not intended.

**[(d) Certification to vestees.** Certification to vestees shall include the following:

(1) Within one year of termination of service, the Board will certify to a vestee the following:

(i) Accumulated deductions in account to date of service termination.

(ii) Number of years and fractional parts of years of credited service.

(iii) Maximum single life annuity to which a vestee would be entitled, upon attainment of superannuation age and timely filing of a proper application.

(2) The Board will also, within 90 days prior to attainment of superannuation age, notify the vestee in writing at the last address which the Board has in its files, the availability of such benefits and the fact that failure to timely file shall result in cancellation of a death benefit in excess of the accumulated deductions while a vestee, if such filing is more than 90 days subsequent to superannuation age. In the event a vestee fails to timely file for a benefit within seven years after superannuation retirement, he shall only be entitled to a return of his accumulated deductions, thereby forfeiting any other benefit available had application has been timely filed.

**[(e)] (c) Payment of annuities.** Payment of annuities shall include [the following:] the tax information as required by the Internal Revenue Code of 1986 (26 U.S.C.A.).

[(1) The Board will, within 60 days subsequent to the effective date of an annuity and the receipt of the required data for the calculation thereof, pay such annuity. Concurrently with the payment of such annuity, the Board will certify to each member, on a separate statement, the following:

(i) The accumulated deductions credited to the termination of service itemized as to member contributions and interest credited thereon.

(ii) The number of years and fractional parts of a year of credited service.

(iii) The final average salary on which such annuity is based as well as the applicable reduction factors due to age or option selection, or both.

(iv) The total annuity payable, the option selected, and the amount and effective date of any future reduction on account of Social Security benefits, if any.

(v) Such tax information as required by the Internal Revenue Code of 1954 (26 U.S.C.A. §§ 1-904(2)). ]

**[(f)] (d) Miscellaneous duties.** Miscellaneous duties shall include the following:

(1) [In the event] If a member dies in service and is eligible for a death benefit, the Board will, within 60 days after receipt of the necessary data and death certificate, pay [such] the death benefit to the designated beneficiary or survivor annuitant, as the case may be.

(2) [In the event] If the Board [will receive] receives notification from an insurance carrier approved by [it] the Board that an annuitant who has attained age 65, has elected appropriate hospitalization insurance coverage, [it] the Board will [cause to be deducted] deduct from the annuity payments, the appropriate monthly installment and forward [such] the deduction to the particular insurance carrier at [such] times as the Board and carrier mutually agree.

[(3) Each joint coverage annuitant, retiring prior to July 1, 1962, may elect no later than one year after October 2, 1975, to receive his annuity without reduction attributable to social security coverage, and shall make payment of the lump sum required to pay for the offset, within 60 days after certification from the Board of the amount so due and thereby become a full coverage member. The recomputed annuity, without the offset, shall be paid beginning with the second monthly payment next following the month in which the lump sum payment is received.]

#### § 215.6. Duties of employers.

(a) [Status Members. The employer shall, each month, notify the Board, in a manner it prescribes, the payroll changes effective during the past month, the date of all removals from the payroll, and the type of leave of any member who has been removed from the payroll for any time during that month.

(1) If the removal is due to leave without pay, the employer shall furnish the Board with the date of beginning leave, the date of return to service, and the reason for leave.

(2) If the removal is due to a transfer to another employer, the former employer shall furnish such employer and the Board with a complete school service record, including credited or creditable nonschool service.

(3) If the removal is due to termination of school service, the employer shall furnish the Board with a complete school service and salary record, including credited school or creditable nonschool service, and, in the case of death of the member, the employer shall so notify the Board.

(4) ] The following procedures shall be employed for reporting salaried, per diem and hourly employees:

[(i)] (1) Salaried employes. Reporting procedures for salaried employes shall comply with the following:

**[ (A) ] (i) [ Effective July 1, 1975, all ]** All part time salaried employes, irrespective of the percentage of time employed, shall be reported based on the percentage of time employed, as it relates to full time salaried employes, and if requested, the employer shall furnish, **[ pursuant to ]** under section 508 of the Public School Code of 1949 (24 P. S. § 5-508), minutes of board meetings indicating the conditions of employment of **[ such ]** these individuals. **[ Such a procedure shall be effective, on a current basis, for all salaried employes, as of July 1, 1976. For the 1975-76 school year, employes shall pay their share without statutory interest and the employer its share under the general provisions applicable to purchase such service. ]**

**[ (B) ] (ii)** This procedure in no way affects the enrollment of salaried employes who are currently members of the System. The member's purchase of **[ such ]** the previous part time salaried service in the 1975-76 school year shall be either a lump sum payment or a method agreed upon by the System and the member without application of interest.

**[ (ii) ] (2) Per diem and hourly employes.** Since a per diem or hourly employe is required to **[ join after working ]** become a member of the System during a school year in which the employe works 80 days or 500 hours **[ as of the date of employment ]**, an employer is responsible for determining if that person shall become eligible for membership during the fiscal year.

**[ (A) ] (i) \* \* \***

**[ (B) ] (ii)** If an employe is enrolled as a member at the beginning of the fiscal year, or when employed, and does not qualify during that fiscal year the employe is then entitled to a refund of accumulated deductions. If an employe is not enrolled at the beginning of the fiscal year, or date of employment, but qualifies during the fiscal year, the school district shall make deductions from that time forward and the employe shall then purchase the first 500 hours or 80 days without application of interest. **[ Any employe who would have been eligible for service credit for the 1975-76 fiscal year may purchase that credit, without statutory interest, if application is timely made. ]**

**(b) Records and information.** At the direction of the Board, the employer shall furnish service and compensation records as well as other information requested by the Board as soon as same is filed, received, or determined and shall maintain and preserve such records as the Board may require for the expeditious discharge of its duties.

**(c) Member and employer contribution.** The employer shall certify to his treasurer the required member contributions deducted from each payroll. The treasurer shall remit to the secretary of the Board each month the total of the member contributions and, quarterly, the amount due from the employer determined in accordance with section 8327 of the code, 24 Pa.C.S. § 8327, relating to payments by employers.

**(d) New employers subject to mandatory membership.** Upon the assumption of duties of each new school employe whose membership in the system is mandatory, the employer shall, no later than 30 days thereafter, cause an application for member-

ship, which application shall include the home address of the employe, birthdate certified by the employer, previous school or State service and any other information requested by the Board, and a nomination of beneficiary to be made by such employe, to be filed with the Board and shall make payroll deductions from the effective date of school employment

**(e) New employers subject to optional membership.** The employer shall, within 30 days of employment, inform any eligible school employe, whose membership in the system is not mandatory, of his opportunity to become a member of the System provided that he elects to purchase credit for all such continuous creditable service. If such employe so elects, the employer shall no later than 30 days thereafter, cause an application for membership, containing the same information so required in subsection (d) of this section, to be filed with the Board and shall make payroll deductions from the date of employment.

**(f) Advising members of duties.** The employer shall advise his employes of their duties as members of the System. Employers shall be held harmless from decisions made by the employe in this regard provided the employe is furnished sufficient information to make a decision.

**(g) Former State employe contributions.** The employer shall, upon the employment of a former member of the State Employee's Retirement System who is not an annuitant of that system, advise such employe of his right to elect multiple service membership within 30 days of entry into the school System, and, if any such employe, who so elects, has withdrawn his accumulated deductions, require him to restore his accumulated deductions to the State system as they would have been at the time of his separation had he been a full coverage member, together with statutory interest for all periods of subsequent State and school service to date of repayment. The employer shall immediately advise the Board of such election.

**(h) Former State employe annuitants.** The employer shall, upon the employment of an annuitant of the State Employees' Retirement System, who applies for membership in the System, advise such employe that he may elect multiple service membership within 30 days of entry into the System, and that if he so elects, his annuity from the State Employees' Retirement System shall be discontinued and upon termination of school service and application for annuity, the annuity shall be adjusted in accordance with section 8507 of the code, 24 Pa.C.S. § 8507, relating to termination of annuities. The employer shall immediately advise the Board of such election.

**(i) Independent contractors.** The employer shall, upon engagement of an independent contractor, who is in receipt of an annuity from this System, notify the Board of such engagement and furnish such information as the Board may require in order for it to determine whether such annuity shall be discontinued and the individual returned to school service.

**(j) ] (b) Annuitants employed in an emergency.** The employer shall, upon the reemployment of an annuitant from the State Employees' Retirement System who has

elected multiple service or this System, in an emergency, notify the Board of commencement and termination of [such] the employment to insure that the [60] 95-day period for a continued receipt of the annuity is not exceeded. If that limitation shall be exceeded in any school year, the employer shall reenroll [such] the annuitant from the [61st] 96th day of employment as an active member of the System, whereupon an annuity adjustment shall be made, as the case may warrant.

**[(k) Termination of service.** The employer shall, in the case of any member terminating school service, advise such member in writing of any benefits to which he may be entitled under the provisions of this Part and shall have the member prepare on or before the date of termination of school service, one of the following three forms, a copy of which shall be given to the member and the original of which shall be filed with the Board as soon as possible.

**(1) An application for the return of accumulated deductions.**

**(2) An election to vest his retirement rights, and if he is a joint-coverage member and so desires, an election to become a full-coverage member and an agreement to pay within 30 days of the date of termination of service the lump sum required.**

**(3) An application for an immediate annuity and, if he is a joint-coverage member and so desires, an election to become a full-coverage member and an agreement to pay within 30 days of date of termination of service the lump sum required. If such a member does not elect to become a full-coverage member at this time, he shall not have the right to purchase this credit at a later date.**

**[(l) Date of application for benefits.** Any application properly executed and filed with the employer under subsection (k), or properly executed and filed with the employer after termination of service shall be deemed to have been filed with the Board on the date filed with employer, whereupon only those benefits applicable to such application shall be paid. ]

**§ 215.7. Rights and duties of school employes and members.**

**(a) Information on new employes.** [ Upon his assumption of duties, each ] Each new school employe shall [ furnish his ] provide the employer with a complete record of [ his ] previous school or State service, or creditable nonschool service, proof of [ his ] date of birth, in the order of preference set forth in subsection (b), [ his ] home address, [ his ] current status in the system and in the State Employees' Retirement System and [ such ] other information as the Board may require. Willful failure to provide the information required by this subsection, to the extent available, or the furnishing of erroneous information upon entrance into the System shall result in the forfeiture of the right of the member to subsequently assert [ any ] a right to benefits based on [ such ] the erroneous information or on any of the required information which [ he ] the member failed to provide, intentionally or otherwise. [ In any case in which ] When the Board finds that a member is receiving an annuity based on false, misleading[, ] or improper

information, the additional amounts received predicated on [such] the information together with statutory interest doubled and compounded shall be deducted from the present value of [any] remaining benefits to which the member is legally entitled and [such] the remaining benefits shall be correspondingly decreased.

\* \* \* \* \*

**[(c) Application for membership.** In those cases where a member has optional membership and in the event he chooses not to join, he shall, nevertheless, execute on forms supplied by the Board, a declination of membership in the System during his continuous school service while in that optional category. In the event an employe designated in section 8301(a)(3) of the code, 24 Pa.C.S. § 8301(a)(3) has chosen membership in the system, his membership shall commence from the original date of eligibility.

**[(d) ] (c) \* \* \***

**[(e) ](d) [ Beneficiary ] Beneficiaries.** Every member shall nominate a beneficiary and contingent beneficiary, if desired, on a form to be filed with the Board and supplied by [ it ] the Board. In all such cases, the designated or contingent beneficiary, as the case may be, shall be the only one entitled to receive the accumulated deductions or the death benefit for those who die in service or those who would be entitled to a benefit under the provisions of Option 1 under section 8345 of the code (relating to member's options). If the beneficiary or contingent beneficiary so designated fails to survive the member, then [such] the payment, subject to the limitation in [ section 3101 of the Probate, Estates and Fiduciaries Code, ( )20 Pa.C.S. § 3101[, ] ] (relating to payments to family and funeral directors) shall be paid to the next of kin. If the applicable limitation cannot be met, then the payment, in the absence of a designated beneficiary, shall be paid to the estate upon the submission of documents required by the Board to authorize payment.

**[(f) ](e) Termination.** Upon termination of service, a member, by written application, may elect to do any of the following:

**(1) Withdraw [ his ] the accumulated deductions, thereby forfeiting any other benefit to which [ he ] the member would otherwise be entitled.**

**(2) Vest [ his ] the retirement account, thereby making [ him ] the member eligible for the vesting benefits as otherwise provided in this part [ , and if ]. If [ he ] the member is a joint coverage member [ and so desires to ], the member may elect to become a full-coverage member and to pay the lump sum required within 30 days subsequent to termination of service.**

**(3) Receive an immediate annuity and [ if he so elects ], in the case of joint coverage membership, pay the lump sum required to become a full-coverage member within 30 days of termination of service.**

**[(g) ] (f) Rights of vestees.** [ Any ] A vestee may, subsequent to vesting, and at any time during the vesting period, withdraw [ his ] the accumulated deductions, thereby forfeiting any other benefit to which [ he ] the vestee would be otherwise entitled, or apply for an

annuity, if [ **he** ] the vestee has at least ten eligibility points. The vestee shall also nominate a beneficiary to receive the vested benefits [ **should he fail** ] if the vestee fails to survive the receipt of the benefit [ **himself** ].

[ **(h)** ] **(g)** *Right of vestee at superannuation age.* [ **In order for** ] For a vestee to be entitled to, and receive, an annuity, effective the date [ **he** ] the vestee attains superannuation age, [ **he** ] the vestee shall file [ **his** ] an application no later than 90 days thereafter. [ **Any** ] An application subsequently filed shall be effective upon the date filed. If a vestee dies within the 90-day period subsequent to superannuation age, not having filed an application for benefits, [ **he** ] the vestee shall be deemed to have elected the automatic death benefit Option 1. [ **Should** ] If the vestee fails to do anything within [ **seven** ] 7 years subsequent to superannuation age, [ **he** ] the vestee shall be deemed to have elected to receive [ **his** ] the accumulated deductions and shall, upon application, be entitled to receipt of [ **same** ] the deductions, thereby forfeiting any other benefit [ **to which he would otherwise be entitled.** ]

**(i)** *Failure to apply for annuity.* If a member is eligible to receive an annuity and fails to file a proper application within 90 days of termination of service, he shall be deemed to have elected to vest, and his annuity shall become effective as of the date an application is filed with the Board or the date designated on the application, whichever is later.

**(j)** **(h)** *Nomination of beneficiary or survivor annuitant.* A member in receipt of a reduced annuity, under any of the options, shall have the following rights with regard to designation of a beneficiary or survivor annuitant:

(1) In the event a member elects Option 1, [ **he** ] the member may change [ **his** ] the designated beneficiary at any time.

(2) [ **In the event** ] If the member selects a survivor annuity option, [ **that is, Option 2 or Option 3,** ] no new survivor annuitant [ **shall** ] may be permitted to be named except in the event that the survivor annuitant [ **predeceased him** ] predeceases the member or there is a change in marital status subsequent to the election of the option. In [ **such** ] these cases, [ **only one new survivor annuitant may be selected and** ] the annuity shall be recomputed to be actuarially equivalent as of the date of recomputation to the annuity in effect immediately prior thereto. In [ **such** ] this case, the member may elect a new option in addition to the [ **one** ] new survivor annuitant. In no other case shall a benefit plan be changed by an annuitant.

(3) Any annuitant having a right to [ **re-elect** ] re-elect an option and name a new survivor annuitant under the circumstances [ **set forth** ] in paragraphs (1) and (2), may do so at any time after the death of the beneficiary or change in [ **his** ] marital status. [ **In no event shall an annuitant, under the circumstances set forth in paragraphs (1) and (2), select more than one survivor annuitant under Option 2 or 3.** ]

**(k)** *Disability annuities.* An application for a disability annuity filed prior to superannuation age, on behalf of one whose physical or mental incapacity precludes him from the performance of duty, may have such application executed by a person legally authorized, to act on his behalf. Such person shall have evidence of appropriate judicial documents giving him the authority to so act, or shall provide such documentation as the Board may require in the circumstances. ]

§ 215.8. [ **Rights and duties of annuitants** ] (Reserved).

[ **(a)** ] *Full coverage annuity.* Any annuitant joint coverage member receiving an annuity prior to July 1, 1962, may elect to receive a full-coverage annuity provided the election is made within one year following the effective date of the code. The lump sum payment required shall also be made to the Board within 60 days of receipt of the amount certified to be due.

**(b)** *Periodic earnings statements by disability annuitants.* It shall be the duty of a disability annuitant, while still under superannuation age, to furnish a written statement within 30 days of the close of each year of all earned income during that year and information showing whether or not he is able to engage in a gainful occupation and such other information as may be required by the board. On failure, neglect, or refusal to furnish such information for the period of the preceding year, the Board may refuse to make further payments due to disability to such annuitant until he has furnished such information to the satisfaction of the Board. Should such refusal continue for six months, all of his rights to the disability annuity payments, in excess of any annuity to which he is otherwise entitled, shall be forfeited from the date of his last statement to the Board. Any moneys received in excess of those to which he was entitled shall be deducted from the present value of the annuity to which he is otherwise entitled.

**(c)** *Medical examinations.* Any disability annuitant refusing, while required to do so, to submit to a medical examination requested by the Board through its medical examiners, shall result in his disability payments being discontinued because of such refusal, and, if the refusal continues for a period of at least six months, his disability payments in excess of any annuity benefits to which he would be otherwise entitled, shall be immediately forfeited. ]

#### MANAGEMENT OF FUND AND ACCOUNTS

§ 215.21. [ **Management of fund and accounts** ] (Reserved).

[ **(a)** ] *Trustees.* The Board members will be trustees of the fund with exclusive control and management of the same and with full power to invest the same subject to the limitations herein imposed and also imposed by the act of April 15, 1929 (P.L. 723)(72 P.S. § 3603), dealing with investments by the various agencies of the Commonwealth.

**(b)** *Custodians.* The custodian of the fund shall be the State Treasurer and no payments shall be made from the fund unless made by the State Treasurer in accordance with requisitions signed by the Board Secretary as ratified by Board resolution.

(c) *Fiduciaries.* Each member of the Board, its employes and agents, will be fiduciaries to the members of the System, regarding investments and disbursements of any of the fund monies, and will not benefit or profit, directly or indirectly, with respect to any transaction in which it is directly or indirectly involved.

(d) *Name for transacting business.* All business of the system, including investments and disbursements, shall be conducted in the name of the Public School Employees' Retirement System or the Public School Employes' Retirement System. The Board pursuant to its authority to transact business will establish a nomination registration procedure to facilitate the sale and transfer of securities under the fictitious name of "SERPA & CO."

(e) *Investment in corporate stocks.* [Reserved].

(f) *Investment in real estate and mortgages.* [Reserved].

#### § 215.23. Member's Savings Account.

Interest is credited to each member's savings account during active or inactive service and also during the period a vestee retains [his] vested credits. No interest is credited to a member's savings account if [he] the member has terminated service or has been an inactive member over 2 years and is not eligible for vested benefits. The rate of interest when credited is the statutory rate of 4.0% per annum.

#### MISCELLANEOUS PROVISIONS

#### § 215.31. [Commonwealth guarantee] (Reserved).

[The required statutory interest charges payable, the maintenance of reserves in the fund, and the payment of all annuities and other benefits granted by the Board under the provisions of the code are hereby made obligations of the Commonwealth, as specifically provided for in sections 8326 and 8327 of the Code, 24 Pa.C.S. §§ 8326 and 8327.]

#### § 215.33. Taxation, attachment and assignment of funds.

The exemption provided in this section shall also [extend to] include a spouse's election as authorized under [sections 6108 and 6111 of the Probate, Estates, and Fiduciaries Code ( )20 Pa.C.S. §§ 6108 and 6111( )] (repealed) (relating to designation of beneficiaries of insurance or employee death benefits not testamentary; and conveyance to defeat marital rights) to the extent applicable. From and after the effective date of this law, the Board will not entertain an assignment from any credit union which, under prior law, was authorized to forward assignments [in order] to collateralize funds in the system to the extent of \$750. From and after [three] 3 years from the effective date of the code, the Board will not honor any credit union loan which had, under prior law, been forwarded to the Board under the provisions thereof. [No] A credit union [shall] may not, directly or indirectly, use an existing assignment on record with the Board as a device to renew or reassign an existing loan in order to collateralize the funds in the System.

#### § 215.34. [Fraud and adjustment of errors.] (Reserved).

[ (a) *Offense defined.* Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this System in any attempt to defraud the System as a result of such act shall be guilty of a misdemeanor of the second degree.

(b) *Adjustment of errors.* Should any change or mistake in records result in any member, beneficiary or survivor annuitant receiving from the System more or less than he would have been entitled to receive had the records been correct, then regardless of the intentional or unintentional nature of the error and upon the discovery of such error, the Board will correct the error so far as practicable and will adjust the payments which may be made for and to such person in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled will be paid. The Board shall recover erroneous payments as the circumstances may warrant.]

#### § 215.35. General regulations.

(a) Former annuitants who are active members of the System on the effective date of the code [shall] are not [be] subject to the recalculation of annuities of annuitants who return to school service thereafter.

[ (b) Active members eligible to purchase creditable nonschool service, under the provisions of the Public School Employes' Retirement Code of 1959 (24 P.S. §§ 3101—3808 (repealed)), shall not be required to pay interest on such purchase, provided the active member elects to purchase such service and makes the required lump sum payment prior to January 1, 1976, or commences regular payments through salary deductions for such service purchase prior to such date, provided, however, that he completes such payments prior to January 1, 1978. Any member entitled to an interest free purchase, as provided in this subsection, who fails to make the elected lump sum payment he has prior to January 1, 1978, shall be required to purchase all such service with interest in accordance with the code, as in all other cases.]

[ (c) ] (b) \* \* \*

[ (d) ] (c) \* \* \*

[ (e) ] (d) \* \* \*

[ (f) ] (e) \* \* \*

[ (g) The provisions reducing the basic contribution rate of active members from 5.5% of compensation to 5.25% of compensation, shall become effective on July 1, 1976, and the provisions relating to the frequency of payment of the employer contributions shall become effective on July 1, 1975.

(h) ] (f) \* \* \*

[ (i) ] (g) \* \* \*

#### § 215.36. Optional alternate retirement programs.

[ Pursuant to ] Under section 8301(a)(1) of the code [ (24 Pa.C.S. § 8301(a)(1)) ] (relating to mandatory and optional membership), certain school employes may elect not to join the [ Public School Employes'

**Retirement ]** System, or to depart from it in favor of an optional alternate retirement program approved by the employer, such as the Secretary of Education or the governing body of certain State institutions, including Pennsylvania State University, as the case may be. Therefore, the following **[ rules and regulations are ]** is adopted by the Board to establish guidelines and procedures, insofar as the Board is authorized to do so, with respect to implementing **[ such ]** a program for certain eligible school employees:

\* \* \* \* \*

(2) Employees, including those employed on the effective date of the establishment of an optional alternate retirement program, who are eligible for membership therein, and who are active members of this System, shall have the option of continuing their active membership or of joining the optional alternate retirement program provided they shall make **[ such ] this** election within **[ nine ] 9** months of the effective date of the establishment of **[ such ] the** optional alternate retirement program. Every employe who subsequently becomes eligible for membership in the optional alternate retirement program shall make **[ such ] the** election within 30 days of the first date of active employment. **[ All employes ]** **Employes** not exercising the option to join the optional alternate retirement program **[ as aforesaid ]** shall be deemed to have chosen to commence or continue active membership in this System, unless they **[ shall ]** have elected membership in the State Employees' Retirement System, as otherwise provided by law.

(3) **[ Where ]** **When** an eligible employe, who is an active member of this System, elects to participate in the optional alternate retirement program in accordance with the provisions of paragraph (2) **[ of this subsection, he ] the employe** may elect to withdraw **[ his ] the** accumulated deductions from the fund as of the date of **[ such ] the** election; or, if **[ such ] the** employe is eligible for vesting in accordance with **[ the provisions of ]** the code, **[ he ] the employe** may elect to leave **[ his ] the** accumulated deductions credited to **[ his ]** account **of the employe** in the fund and receive a retirement allowance from the System upon separation from employment; or, at **[ his ] the employe's** option, upon attainment of superannuation retirement age, if later. **[ Such ] This** retirement allowance shall be based upon **[ his ]** credited service and final average salary while a contributing member to this System only.

(4) Notwithstanding any provisions **[ heretofore ]** to the contrary, an eligible employe employed on the effective date of the establishment of the optional alternate retirement program, who is eligible for membership therein, who is an active member of this System, and who is not vested in the retirement system, shall have the option of joining the optional alternate retirement program within 60 days of the date upon which **[ he ] the employe** becomes eligible for vesting in accordance with the applicable provisions of the code, in which case **[ he ] the employe** may vest and join the optional alternate retirement program under the same conditions as provided in paragraph (3).

(5) **[ Where ]** **When** an eligible employe elects to participate in the optional alternate retirement program in accordance with **[ the provisions of paragraphs ]**

**paragraph** (2) or (4), the election shall be final and binding so long as **[ he ] the employe** shall remain eligible to remain in the optional alternate retirement program. **[ Where ]** **If** an employe later is employed in a capacity which does not qualify **[ him ]** for membership in the optional alternate retirement program, **[ he ] the employe** shall, upon meeting the qualifications for membership in this System, resume making contributions to the fund or reinstate **[ his ] the** former credited service for which contributions had been withdrawn, as the case may be, in accordance with the applicable provisions of the code. In no case shall service, salary or other compensation paid to an employe while a member of the optional alternate retirement program be credited toward membership in this System.

(6) In the case of eligible employes who elect to join the optional alternate retirement program, the contribution of the Commonwealth to the optional alternate retirement program on behalf of **[ such ] the** employes **[ shall ] will not** be **[ no ]** more than 1/2 of the employer normal contribution rate and accrued liability rate as determined in accordance with 24 Pa.C.S. § 8328 (b) and (c) (relating to actuarial cost method).

[Pa.B. Doc. No. 98-486. Filed for public inspection March 27, 1998, 9:00 a.m.]

## STATE BOARD OF AUCTIONEER EXAMINERS

### [49 PA. CODE CH. 1] Biennial Renewal Fees

The State Board of Auctioneer Examiners (Board) proposes to amend Chapter 1 by adding § 1.41 (relating to schedule of fees) and amending §§ 1.23 and 1.26 (relating to auctioneer licensure examination; and application for auction house and auction company licenses), to read as set forth in Annex A.

The proposal will raise the biennial renewal fee for auctioneers, apprentice auctioneers, auction houses and auction companies for the upcoming biennial renewal. The current biennial period expires on February 28, 1999. As proposed, the biennial renewal fees for apprentice auctioneers would increase from \$30 to \$100 and the biennial renewal fees for auctioneers, auction companies and auction houses would increase from \$50 to \$200.

#### *Statutory Authority*

Section 6(a) of the Auctioneer and Auction Licensing Act (act) (63 P.S. § 734.6(a)), requires the Board to establish fees by regulation. Section 6(b) of the act requires the Board to increase fees to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures.

#### *Purpose and Need for the Amendments*

The current biennial renewal fees were established by the Legislature in 1978 in section 203 of the Bureau of Professional and Occupational Affairs Fee Act (Fee Act) (63 P.S. § 1401-203). The Board first implemented the biennial reconciliation of revenues and expenditures required under section 6 of the act (63 P.S. § 733.6), for the biennial renewal period commencing July 1, 1985. From

FY 1985-86 to FY 1995-96, the Board's revenue account showed sufficient balance to meet anticipated expenditures. At the end of FY 1995-96, the balance in the Board's operating account was \$160.85. In FY 1996-97, the Board incurred a deficit of \$110,401.62.

The proposed increase is necessary to accommodate the \$110,401.62 deficit carried forward from the 1995-97 biennial renewal period and to anticipate continuing deficits in future cycles. Based on current fees, the Board is projected to have a deficit of \$235,191.62 on June 30, 1998, \$263,611.62 on June 30, 1999, and \$409,211.62 on June 30, 2000. Renewal fees have not been raised since 1978.

Biennial revenues for the Board have remained relatively constant. In contrast, expenditures over the past 4 fiscal years have increased by an average of 12.41% per year and are expected to increase by at least 3% in continuing years. As a result of increased expenditures and shortfalls in revenue, expenditures must be rolled to the next fiscal year.

The Board anticipates that with the implementation of the proposed increase it will not be necessary to increase renewal fees again for at least three biennial renewal periods. Increased revenues will result in the Board having a closing balance of \$86,208.48 on June 30, 1999, and a deficit of \$59,391.52 on June 30, 2000. The Board's closing balance will rise to \$252,008.48 on June 30, 2001, and \$96,408.48 on June 30, 2002.

*Description of Proposed Amendments*

The Board proposes to establish a new § 1.41 where all fees will be conveniently located. In addition to establishing the new biennial renewal fees, the Board relocates the current fees for the licensure examination and auction license and auction company licenses from § 1.23 and § 1.26, respectively. The existing \$200 fee for a special auction license in section 203(8) of the Fee Act is relocated and reestablished in § 1.41.

The following chart compares the proposed new and existing fees:

Category	Proposed	Current
Examination	\$ 87	\$87 (Moved from 49 Pa. Code § 1.23)
License—Auctioneer	\$ 50	\$50 63 P. S. § 1401.203(4)
Biennial Renewal	\$200	\$50 63 P. S. § 1401.203(6)
License—Apprentice Auctioneer	\$ 30	\$30
Biennial Renewal	\$100	\$30 63 P. S. § 1401.203(7)
License—Auction House and Auction Company	\$ 50	\$50 (Moved from 49 Pa. Code § 1.26)
Biennial Renewal	\$200	\$50
Special License	\$200	\$200 63 P. S. § 1401.203(8))

*Fiscal Impact*

The proposed amendments will increase the biennial renewal fees for apprentice auctioneers, auctioneers, auction houses and auction companies in this Commonwealth. The cost per license is \$75 annually. The increase in renewal fees should have no other fiscal impact on the private sector, the general public or political subdivisions.

*Paperwork Requirements*

The proposed amendments will require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the proposed amendments should not create additional paperwork for the private sector.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 17, 1998, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of the material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections prior to final publication of the amendments by the Board, the General Assembly and the Governor.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Linda Dinger, Administrator, State Board of Auctioneer Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

KENNETH A. GEYER,  
*Chairperson*

**Fiscal Note:** 16A-642. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**  
**PART I. DEPARTMENT OF STATE**  
**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**  
**CHAPTER 1. STATE BOARD OF AUCTIONEER EXAMINERS**  
**LICENSURE**

§ 1.23. Auctioneer licensure examination [ ; fees ].

\* \* \* \* \*

(b) The applicant for auctioneer's license shall apply to the Board for admission to the licensure examination and pay the fee [ of \$87 ].

\* \* \* \* \*

**§ 1.26. Application for auction house and auction company licenses [ ; fees ].**

(a) An applicant for an auction house or auction company license shall:

\* \* \* \* \*

(2) Submit with the application a check or money order **[ in the amount of \$50 ] for the required fee**, payable to the "Commonwealth of Pennsylvania."

\* \* \* \* \*

(b) Auction houses and auction companies which were issued licenses prior to July 8, 1989, and have not paid the **[ \$50 ] required fee [ are required to ] shall remit [ that ] the fee** within 30 days of receipt of notice from the Board and thereafter will be required to pay the biennial renewal fee. Failure to remit the required licensure fee within that time will result in the license being placed on inactive status. The Board may take disciplinary action against a license holder for operation of an auction house or auction company when the license is on inactive status.

**[ (c) The biennial renewal fee is \$50. ]**

**FEES**

**§ 1.41. Schedule of fees.**

**Applicants shall pay the following fees:**

- (1) Examination fee for auctioneer license . . . . . \$87
- (2) Application fee for auctioneer license . . . . . \$50
- (3) Biennial renewal fee for auctioneer license . . . . \$200
- (4) Application fee for apprentice auctioneer license . . . . . \$30
- (5) Biennial renewal fee for apprentice auctioneer . . . . . \$100
- (6) Application fee for auction house and auction company . . . . . \$50
- (7) Biennial renewal fee for auction house and auction company . . . . . \$200
- (8) Special license to conduct auction . . . . . \$200

[Pa.B. Doc. No. 98-487. Filed for public inspection March 27, 1998, 9:00 a.m.]