

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[70 PA. CODE CH. 9]

[CORRECTION]

Weights, Measures and Standards

A numbering error occurred in the document proposing to add Chapter 9 which appeared at 28 Pa. B. 5109, 5125 and 5127. The table of contents did not accurately reflect the numbering of the sections in this chapter. In addition, § 9.13 (relating to weighmaster's certificate required) should be numbered § 9.21. The correct table of contents is as follows:

CHAPTER 9. WEIGHMASTERS

GENERAL

| | |
|-------|---|
| Sec. | |
| 9.1. | Purpose. |
| 9.2. | Definitions. |
| 9.3. | License required. |
| 9.4. | Qualifications. |
| 9.5. | Application for a public weighmaster's license. |
| 9.6. | Term of license; subsequent licenses. |
| 9.7. | Format of a public weighmaster's license. |
| 9.8. | Display of license required. |
| 9.9. | Commodities sold by weight. |
| 9.10. | Weighmaster's certificate. |
| 9.11. | Issuing a public weighmaster's certificate. |
| 9.11. | Retention and inspection of certificates. |

SOLID FUEL

| | |
|-------|---|
| 9.21. | Weighmaster's certificate required. |
| 9.22. | Sales by employer-producer to employees. |
| 9.23. | Certificate affecting weighing. |
| 9.24. | Limitations of certificate for anthracite. |
| 9.25. | Responsibilities of weighmasters and shippers. |
| 9.26. | Certificate of special transportation. |
| 9.27. | Issuance of weighmaster certificates with respect to mine track scales and tipple scales. |
| 9.28. | Reweighing and issuance of certificates. |
| 9.29. | Reciprocity with New York. |

The correct section number and heading is as follows with ellipses referring to the proposed text of the regulation:

§ 9.21. Weighmaster's certificate required.

* * * * *

[Pa.B. Doc. No. 98-1651. Filed for public inspection October 9, 1998, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CHS. 133, 145 AND 147]

Wildlife Classification, Hearing Procedures and Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its July 14, 1998, meeting, proposed amendments to read as set forth in Annex A. The Commission is proposing to:

Amend § 133.21 (relating to classification of birds) to change the status of several species of birds of special concern in this Commonwealth.

Amend § 145.21 (relating to Deputy Game Protector hearing procedure) to make editorial changes to more accurately reflect the proper title for deputy wildlife conservation officers, and to provide for deputy wildlife conservation officer's trial board hearing procedures to be closed to the public.

Amend § 147.109 (relating to restrictions on taking raptors) to provide for a limited number of special permits for nonresident falconers from reciprocating states to take a raptor from the wild in this Commonwealth.

These proposed amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposal is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

These proposals were made public at the July 14, 1998, meeting of the Commission, and comments on these proposals may be sent to the Executive Director of the Pennsylvania Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until November 30, 1998.

Proposed Amendment to § 133.21

1. Introduction

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on July 14, 1998, proposed changing § 133.21 to change the endangered and threatened status of a number of birds. This proposed action resulted from a recommendation of the Ornithological Technical Committee of the Pennsylvania Biological Survey. The proposal is being made under authority contained in sections 322(c)(8) and 2102(a) of the code (relating to powers and duties of the Commission; and regulations).

2. Purpose and Authority

The Ornithological Technical Committee of the Pennsylvania Biological Survey reviews the status of birds on the list of birds of special concern in this Commonwealth every 5 years. The Committee recently completed a review and recommended to the Commission that the status of seven birds be changed. The status of five birds would be upgraded while the status of two birds, Osprey and Common Tern would be downgraded.

Section 322(c)(8) of the code authorizes the Commission to add to or change the classifications of any bird or wild animal. Section 2102(a) of the code directs the Commission to promulgate regulations it deems necessary and appropriate concerning game or wildlife. The proposed section would be adopted under this authority.

3. Regulatory Requirements

Since species that are endangered or threatened are essentially equally protected, the proposed changes in classification will make little difference, with one exception. The status of the Dickcissel is being changed from "undetermined" to "threatened." As such, it will receive increased protection.

4. Persons Affected

As was indicated under *Regulatory Requirements*, the changes in status should not have any practical impact. Those encountering Dickcissels or their nests would be affected by the change to threatened status.

5. *Cost and Paperwork*

The proposed change would not add any additional cost or paperwork.

Proposed Amendment to § 145.21

1. *Introduction*

To better administer the code, the Commission at its meeting held on July 14, 1998, proposed changing § 145.21 to update terminology and provide that the hearings be closed to the public. These changes are being proposed under powers conferred in section 304 of the code (relating to Deputy Game Commission Officers).

2. *Purpose of Authority*

With the adoption of the code, the designation of the Commission's officers was changed from "game protector" to "wildlife conservation officer." This terminology was never changed in § 145.21. The proposed change would rectify this situation.

In addition, hearings for deputy officers are usually disciplinary in nature which may involve disclosure of essentially private information. To protect the privacy and rights of the officers involved, the Commission has proposed that the hearings not be open to the public.

Section 304 of the code, authorizes the Commission to appoint deputy game commission officers. That section also makes those deputies "... subject to all requirements and regulations, either of the law or of the commission..."

3. *Regulatory Requirements*

The proposed changes would not impose any additional regulatory requirements.

4. *Persons Affected*

Wildlife conservation officers, Deputies and other individuals involved in deputy hearings would be affected by the proposed change.

5. *Cost and Paperwork Requirements*

The proposed change would not add any additional cost or paperwork.

Proposed Amendment to § 147.109.

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission, at its meeting held on July 14, 1998, proposed changing § 147.109 to allow nonresident falconers to apply for a permit to take a raptor in this Commonwealth if their home state reciprocates. The changes are proposed under the section 2901(b) of the code (relating to regulations for permits).

2. *Purpose and Authority*

With certain exceptions, prior to enactment of Act 19 of 1996, which amended section 2901 of the code, the Commission could not issue permits to nonresidents. This meant that Pennsylvania falconers could not take advantage of a wider variety of raptors available in other states because other states will only reciprocate in allowing the taking of raptors. Act 19 of 1996 changed this and authorizes the Commission to now reciprocate in allowing nonresidents to take raptors in this Commonwealth. The proposed changes are the implementing provisions for this reciprocity.

Section 2901(b) of the code authorizes the Commission to promulgate regulations "... for the issuance of any permit or to control the activities which may be per-

formed under authority of any permit issued..." This provision is the basis for the proposed changes.

3. *Regulatory Requirements*

Nonresident falconers wishing to take a raptor in this Commonwealth would need to be from a state that reciprocates in the taking of raptors and would be subject to a number of limitations.

4. *Persons Affected*

Nonresident falconers would be affected by the proposed changes. Resident falconers would benefit from the changes.

5. *Cost and Paperwork Requirements*

Nonresident falconers will need to submit an application and pay a nonrefundable fee of \$100. Given the fact that the total number of permits that will be issued is 20, the number of applications should be small.

6. *Effective Date*

These proposed changes would be effective on final publication in the *Pennsylvania Bulletin* and would remain in effect until changed by the Commission.

7. *Contact Person*

For further information on the proposed changes, contact James R. Fagan, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

DONALD C. MADL,
Executive Director

Fiscal Note: 48-105. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 133. WILDLIFE CLASSIFICATION

Subchapter B. BIRDS

§ 133.21. Classification of birds

The following birds are classified:

(1) *Endangered.*

* * * * *

(ii) King Rail ([*Railus*] *Rallus elegans*)

* * * * *

(iv) Black Tern ([*Clidonias*] *Chlidonias niger*)

(v) [*Osprey (Pandion haliaetus)*] **Least Bittern (*Ixobrychus exilis*)**

* * * * *

(vii) Loggerhead Shrike (*Lanius ludovicianus* [*migrans*])

(viii) **American Bittern (*Botaurus lentiginosus*)**

(ix) **Great Egret (*Casmerodius albus*)**

(x) **Yellow-crowned Night Heron (*Nycticorax violaceus*)**

(xi) **Common Tern (*Sterna hirundo*)**

(2) *Threatened.*

(i) [**Least Bittern (*Ixobrychus exilis*)**

(ii) **American Bittern (*Botaurus lentiginosus*)**] **Osprey (*Pandion haliaetus*)**

(ii) Dickcissel (*Spiza americana*)

* * * * *

(v) [Great Egret (*Casmerodius ulbus*)

(vi) Yellow-crowned Night Heron (*Nycticorax violaceus*)

(vii) [Yellow-bellied Flycatcher ([*Empidonax*] *Empidonax flaviventris*)

CHAPTER 145. HEARING PROCEDURES

Subchapter B. SPECIAL HEARING PROCEDURES

§ 145.21. Deputy [Game Protector] wildlife conservation officer hearing procedure.

(a) Deputy [Game Protectors] wildlife conservation officers will not be dismissed from Commission service without first being granted an opportunity for a hearing, unless the hearing is waived by the Deputy whose dismissal is proposed.

(b) A Deputy [Game Protector] wildlife conservation officer who is suspended and recommended for dismissal on the grounds of negligence, disregard of duties, conduct unbecoming an officer, unsatisfactory work or an indiscreet act will be cited for a hearing and dismissal on the grounds of inefficiency, indiscretion or insubordination.

(c) Charges against a [Deputy Game Protector] wildlife conservation officer for reason of negligence, disregard of duties, conduct unbecoming an officer, unsatisfactory work, or indiscreet act may be brought by a superior officer, in writing, and filed with the Director.

* * * * *

(e) If a hearing is requested, the Director will appoint a member of the staff as hearing officer to hear the charges. Hearings conducted under this subchapter are considered disciplinary matters and will be closed to the public.

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CHAPTER 147. SPECIAL PERMITS

Subchapter F. FALCONRY

§ 147.109. Restrictions on taking raptors.

(a) Taking restrictions for residents are as follows:

* * * * *

(b) Taking restrictions for nonresidents are as follows:

(1) A nonresident possessing a current and active falconry permit in the General or Master Classification in a state listed in 50 CFR 21—29(k) (relating to Federal falconry standards), may apply for a special permit to take a raptor in this Commonwealth if the home state of the applicant allows the taking of raptors by nonresidents.

(2) The fee for a permit to take a raptor is \$100 and is not refundable.

(3) Applications for this permit shall be submitted directly to the Commissions' Bureau of Law Enforcement and shall state the applicants name, address, date of birth, telephone number and the species desired and whether a nestling (eyas) or passage bird is requested. Copies of the applicant's current state or Federal, or both, falconry permit along with a valid import permit or letter from the

applicant's home state authorizing the import of the raptor being requested shall accompany the application. A certified check or money order in the amount of \$100 payable to "Pennsylvania Game Commission" shall accompany the application.

(4) Applications may only be submitted between January 1 and February 28 annually.

(5) Periods for taking raptors as authorized under a nonresident take permit are May 8 to July 15 inclusive for nestling (eyas) birds or September 19 to December 31, inclusive for passage birds.

(6) A permittee may not take the last remaining nestling—eyas—from a nest.

(7) The number of permits issued annually will not exceed:

| NUMBER | TYPE |
|--------|-----------------|
| 5 | Nestling (Eyas) |
| 15 | Passage |

(8) Eyas Goshawk birds may not be taken.

(9) Permits will be issued under a first-come-first-served procedure until the annual allocation is exhausted.

(10) The acquisition of a raptor taken from the wild as authorized by the take permit shall be immediately reported to the Commission by completing a Form 3-186A (Migratory Bird Acquisition and Disposition Report) and forwarding a copy to the Bureau of Law Enforcement, Technical Services Division.

(11) Marking of certain raptors shall be as directed in 50 CFR 21.28(d)(7) (relating to falconry permits).

(12) Raptors taken under the authority of this permit shall be used for falconry purposes only.

[Pa.B. Doc. No. 98-1706. Filed for public inspection October 16, 1998, 9:00 a.m.]

INSURANCE DEPARTMENT

[31 PA. CODE CHS. 33 AND 67a]

Pennsylvania Assigned Risk Consumer Protection

The Insurance Department (Department) proposes to delete § 33.29 (relating to the Pennsylvania Automobile Insurance Plan (assigned risk)) and establish Chapter 67a (relating to Pennsylvania Assigned Risk Plan Consumer Protections) to read as set forth in Annex A. The Department proposes the amendments under the authority of the act of May 17, 1921 (P. L. 682, No. 284) (40 P. S. §§ 341—991); The Insurance Department Act of 1921 (40 P. S. §§ 1—321); sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); and 75 Pa.C.S. Chapter 17, Subchapter D (relating to Motor Vehicle Financial Responsibility Law).

Purpose

Section 33.29, was initially promulgated to address the Department's concerns regarding the method of payment and the manner in which premium moneys were collected and forwarded to the Pennsylvania Assigned Risk Plan. Additionally, the Department wanted to ensure that coverage in the market of last resort is provided as

expeditiously as possible so that the owners and operators of motor vehicles registered or operated in this Commonwealth can meet the requirements for compulsory automobile insurance in this Commonwealth. These guidelines were offered to assist the applicant, producer and the plan. The purpose of this proposed rulemaking is to delete § 33.29 and establish Chapter 67a by: 1) providing a new title and format to facilitate understanding of the terminology and the provisions in the proposal; 2) adding detail for clarity; 3) eliminating those items that should not be reflected in regulation but should be addressed in the Assigned Risk Plan rules; and 4) strengthening the provisions of the regulation continuing to ensure protections for those residents of this Commonwealth seeking automobile insurance through the market of last resort.

Explanation of Regulatory Requirements

The new provisions of § 33.29 have been moved to Chapter 67a. The format has been changed to reflect both the new definitions section and the section relating to consumer protections.

The title of the chapter "Pennsylvania automobile insurance plan (assigned risk)" has been changed to "Pennsylvania assigned risk plan Consumer protections" to more accurately describe the intent of the regulations.

Section 67a.1 (relating to definitions) has been added to explain the terms "Assigned Risk Plan," "producer," "producer of record" and "voluntary market" when used in the context of the regulations.

Section 67a.2 (relating to consumer protections) formerly § 33.29, has been renamed providing for a more accurate description of its purpose.

Section 67a.2(a) reflects the amendments to § 33.29(a) which enhance its clarity.

Section 67a.2(b) replaces § 33.29(b). This subsection has been added as a consumer protection measure, ensuring that coverage in the assigned risk plan is offered to the applicant, by the producer, only after a diligent search of the voluntary market has been conducted.

Section 67a.2(c) replaces § 33.29(c). Section 33.29(c) was deleted because it contains unnecessary language regarding the administration of commissions which should be addressed in the assigned risk plan rules. Sections 67a.2(c), 67a.2(d) and 67a.2(e) contain language previously found in § 33.29(d). Section 33.29(d) was split into three sections to emphasize the importance of each provision. However, these subsections were modified to eliminate unnecessary reference to conformance to the assigned risk plan rules. Section 67a.2(c) was also modified to allow for the acceptance of premium using other methods of premium payment approved by the Commissioner.

Section 67a.2(f), formerly § 33.29(e) has been modified to eliminate unnecessary language referencing the assigned risk plan rules.

Section 67a.2(g) has been added to reflect case law which upholds the Department's position regarding the prohibition against producers charging referral or other fees for placing or servicing any Assigned Risk Plan policy. See *Park v. Chronister*, 617 A.2d 863 (Pa. Cmwlth. 1992).

Section 67a.2(h), formerly § 33.29(f), has been modified to clarify that the Department's authority to enforce the provisions of the Assigned Risk Plan rules, relating to the conduct of producers, is not limited to fiduciary matters.

Fiscal Impact

The proposed amendments will have no impact on costs associated with the Department, producers, Assigned Risk Plan, political subdivisions or the general public.

Paperwork

The proposed amendments impose no additional paperwork requirements on the Department, producers, Assigned Risk Plan or the general public.

Persons Regulated

The proposed amendments apply to agents or brokers authorized by the Department to conduct business of property and casualty insurance and are certified by the Assigned Risk Plan.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed, in writing, to Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 5, 1998, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. In addition to the submitted 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 that material is available to the public upon request.

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 the Department, the Governor and the General Assembly to review these objections before final publication of the rulemaking.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-171. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART I. GENERAL PROVISIONS

Subpart C. AGENTS AND BROKERS

CHAPTER 33. LICENSING REQUIREMENTS

§ 33.29 [**Pennsylvania Automobile Insurance Plan (assigned risk)**] (Reserved).

[(a) An agent who submits an application to the assigned risk plan through the company for which he is a licensed agent is not required to be licensed as an insurance broker in order to handle the delivery of the policy of the company to which the risk is assigned.

(b) Commissions earned on the transaction shall be considered as having been earned in the normal

business of the agent with the company for which he holds an agent's license.

(c) An agent or broker through whom an assigned risk was placed is obligated to return, on a *pro rata* basis, his unearned commission to the insurance company to which the risk was assigned upon cancellation of a policy by the company. An agent or broker through whom an assigned risk was placed is obligated to return, on a short rate basis, as provided in the policy, his unearned commission to the insurance company to which the risk was assigned upon cancellation of a policy by an insured. In the absence of an explanation satisfactory to the Insurance Department, an agent or broker failing to return unearned commissions as provided in this subsection shall be deemed in violation of sections 633 and 639 of the Insurance Department Act of one thousand nine hundred and twenty-one (40 P. S. §§ 273 and 279) and other applicable laws and shall be subject to penalties as specified therein.

(d) Upon original applications, premium monies to the producer of record shall be in the form of a postal money order, cashier's check, certified check or personal check made payable to the "Pennsylvania Automobile Insurance Plan." The producer of record shall speedily remit such payment in conformance with the rules of the Plan. Upon receipt of such premium monies, the producer of record shall issue a receipt, certifying the date—day, month and year—and time—hour, a.m. or p.m., the applicant's name and address, the signature of the producer, and the following statement:

"Received for the Pennsylvania Automobile Insurance Plan."

The producer of record shall maintain appropriate records of original applications, noting the time and date of coverage and shall make available for inspection or photocopying such records by the Plan or by a company representative or the Insurance Department. A copy of such receipt will be sent to the Plan along with other forms in conformance with the rules of the Plan.

(e) If the applicant produces reasonable documentation of payment of the required premium to the producer of record and completion of an application for insurance under the Plan, payment to the producer of record shall be deemed payment to the Plan for the purposes of this subsection. Coverage shall be deemed effective as of the date and time specified in the application and according to sections 11, 12 and 14 of the Plan.

(f) An agent or broker failing to remit premium monies received under subsection (d) violates sections 633, 633.1 and 639 of The Insurance Department Act of one thousand nine hundred and twenty-one (40 P. S. §§ 273, 273.1 and 279) and other applicable laws and are subject to penalties as specified therein.]

(*Editor's Note.* The following chapter is proposed to be added. It is printed in regular type to enhance readability.)

CHAPTER 67a. PENNSYLVANIA ASSIGNED RISK PLAN CONSUMER PROTECTIONS

Sec.
67a.1. Definitions.
67a.2. Consumer protections.

§ 67a.1. Definitions.

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

Assigned Risk Plan—A mechanism for the equitable apportionment among insurers of good faith applicants who are unable to obtain insurance through the voluntary market.

Department—The Insurance Department of the Commonwealth.

Producer—An agent or broker authorized by the Department to conduct business and certified by the Assigned Risk Plan.

Producer of record—The agent or broker authorized by the Department to conduct business, certified by the Assigned Risk Plan and whose signature appears on the application for insurance.

Voluntary market—The market where a person obtains insurance without the assistance from government and through an insurer of the consumer's own selection.

§ 67a.2. Consumer protections.

(a) A producer may submit an application to the Assigned Risk Plan and may deliver the policy of the company to which the risk is assigned.

(b) A producer may submit an application to the Assigned Risk Plan only after having been unable to obtain coverage for the applicant, after a reasonable search of the voluntary market, within the time frame established by the Assigned Risk Plan rules.

(c) Upon completion of the original application, premium moneys from the applicant to the producer of record shall be in the form of a money order, cashier's check, certified check, personal check or other method approved by the Insurance Commissioner, made payable to the "Pennsylvania Assigned Risk Plan." The producer of record may not accept cash.

(d) Upon receipt of the premium moneys for an original application, the producer of record shall issue a receipt showing the amount received, and the date and time that the money was received. The receipt shall also contain the applicant's name and address, the signature of the producer of record and a statement indicating that it was received for the Pennsylvania Assigned Risk Plan. The electronic mail reference number shall be included, if applicable.

(e) A producer of record shall maintain appropriate records of original applications, including the electronic mail reference number, noting the date and time of coverage. The producer of record shall make these records available for inspection to the Assigned Risk Plan, a representative of the assigned company or the Department.

(f) If the applicant produces reasonable documentation of payment of the required premium to the producer of record in accordance with subsection (c) and a completed application for insurance under the Assigned Risk Plan, payment to the producer of record shall be deemed payment to the Assigned Risk Plan in accordance with the Assigned Risk Plan rules. Coverage shall be effective as of the date and time specified in the application in accordance with the Assigned Risk Plan rules.

(g) A producer may not charge referral fees or other fees for placing or servicing any coverage in the Assigned

Risk Plan. A producer's remuneration shall be limited to the method of compensation established by the Assigned Risk Plan rules.

(h) Producers shall comply with the Assigned Risk Plan rules. Violation of the Assigned Risk Plan rules may be construed to be a violation of section 604 of The Insurance Department Act of 1921 (40 P. S. § 234).

[Pa.B. Doc. No. 98-1707. Filed for public inspection October 16, 1998, 9:00 a.m.]

PENNSYLVANIA MUNICIPAL RETIREMENT BOARD

[16 PA. CODE CHS. 81, 83, 85, 87 AND 91]

Revisions to Rules and Regulations

Purpose of the Proposed Amendments

Under Executive Order 1996-1, the Pennsylvania Municipal 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 substantive amendments to its rules and regulations to read as set forth in Annex A.

General Comments

1. *Gender neutral language.* The regulations have not been updated since 1976, and generally use the masculine tense. The proposed changes rewrite, where applicable, to gender neutral language.

2. *Deletions of language in the Pennsylvania Municipal Retirement Law (53 P. S. §§ 881.101—881.502) (Law).* Generally, where the regulatory provisions merely repeat or restate language already contained in the Law, the language was deleted as unnecessary.

3. *Consolidation.* Currently the regulations contain one chapter for each of the four articles of the Law. Much of Chapters 85 and 87 was repetitive simply referencing the previous chapters. The proposed revisions consolidate the regulations making all the regulations applicable to every article of the Law, and deleting the repetitious sections.

Section by Section Analysis

Chapter 81 (General Provisions)

§ 81.1 *Definitions*

"Active member"—Added to clarify plans which use this term.

"Actuarially equivalent"—Technical correction.

"Annuitant"—Deleted because language is substantially repetitive of the Law.

"Beneficiary"—Technical correction.

"Contributor"—Added to clarify that the term "contributor" includes members not required to make member contributions to the Pennsylvania Municipal Retirement System (System).

"Date of termination of service"—Technical corrections, and rewritten for clarity.

"Inactive member"—Added to clarify plans which use this term.

"Intervening military service"—Deleted because language is either substantially repetitive of the Law or is

outdated under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

"Law"—Technical correction.

"Municipal employe"—Deleted as unnecessary.

"Municipal fireman"—Deleted as unnecessary.

"Municipal policeman"—Deleted as unnecessary.

"Municipality"—Deleted because language is either substantially repetitive of or inconsistent with the Law.

"New member"—Deleted because it is an unused term.

"Optional membership"—Technical corrections.

"Portability"—Definition added because term is commonly used in municipality contracts.

"System"—Technical correction.

"Vestee"—Changed to "vested member."

§ 81.2 *Applicability of regulations*—Because regulations are being consolidated to eliminate unnecessary repetition, this section is added to reflect that all regulations are applicable to all articles of the Law.

§ 81.3 *General powers of the Board*—Deleted language substantially repetitive of the Law and added clarification that the Board acts as an independent administrative board.

§ 81.4 *Actuarial investigation, tables, and rates*—Deleted outdated language and added language consistent with the Internal Revenue Code.

§ 81.5 *Information to municipalities*—Deleted because language was substantially repetitive of the Law.

§ 81.6 *Election by municipalities to join retirement system*—Deleted because language was either substantially repetitive of the Law or outdated.

§ 81.7 *Retirement funds and accounts*—Deleted language substantially repetitive of the Law and added language clarifying the various accounts maintained by the System, and clarifying a municipality's right upon withdrawal to a portion of the retired members' reserve account based upon *Pottstown v. PMRS*.

§ 81.9 *Management and investment of fund; interest credits*—Technical corrections and added language clarifying the Fund as a trust.

§ 81.10 *Withdrawal provisions*—Deleted municipal guarantee because language was substantially repetitive of the Law and consolidated portion of § 83.14 along with additional language clarifying a withdrawing municipality's responsibility to retired members and beneficiaries, and clarifying the use of the term "municipal employe" for withdrawal purposes only.

§ 81.11 *Contract provisions*—Added contract provisions clarifying how it is determined if a contract contains an increase or decrease of benefits, and limits thereon.

§ 81.12 *Existing local retirement systems*—Deleted because language is either substantially repetitive of the Law or outdated.

§ 81.13 *Monthly payments*—Deleted because language is either substantially repetitive of the Law or outdated.

§ 81.14 *Exemption of retirement allowance*—Deleted because language is substantially repetitive of the Law and conflicting with current Pennsylvania case law regarding domestic relations matters.

Chapter 83 (Municipal Employees)

§ 83.3 *Compulsory and optional membership*—Technical corrections.

§ 83.4 *Service allowance; change of employment; military service*—Deleted subsections (a)—(h) because language was either substantially repetitive of the Law or outdated. Deleted subsection (i) because language was substantially repetitive of the Law and conflicted with USERRA.

§ 83.5 *Determination of municipal liability*—Deleted because language was substantially repetitive of the Law.

§ 83.6 *Contributions by members*—Deleted subsections (a) and (b) because language was either substantially repetitive of the Law or outdated. Changed subsection (c) to comply with the Internal Revenue Code.

§ 83.7 *Purchase requirements for previous service*—Deleted subsections (a)—(d) because language was either substantially repetitive of the Law or outdated.

§ 83.8 *Superannuation retirement*—Deleted because language was substantially repetitive of the Law.

§ 83.9 *Death benefits*—Deleted because language was substantially repetitive of the Law.

§ 83.10 *Early retirement*—Deleted because language was substantially repetitive of the Law.

§ 83.11 *Options on superannuation or early retirement*—Deleted language substantially repetitive of the Law, and rewrote paragraphs (b) and (c) to reflect PMRS current policy and to note that the municipal portion of the benefit must be paid in a monthly annuity.

§ 83.12 *Disability retirement*—Deleted subsections (a), (c) and (d) because the language was substantially repetitive of the Law.

§ 83.13 *Vesting*—Deleted because language was substantially repetitive of the Law or outdated.

§ 83.14 *Withdrawal provisions*—Paragraphs (1)—(9) were deleted because the language was substantially repetitive of the Law. Paragraph (10) in substantial part has been moved to § 81.10 for consolidation purposes.

§ 83.15 *Procedures for amending contracts*—Deleted because language was substantially repetitive of the Law.

Chapter 85 Municipal Firemen and Municipal Police—Deleted and consolidated.

Chapter 87 Optional Retirement Plans—Deleted and consolidated.

Chapter 91 (Special Rules of Administrative Practice and Procedure)

§ 91.1 *Applicability of general rules*—Technical corrections.

Statutory Authority

The Board's authority to promulgate rules and regulations for the proper administration of the System is set forth in section 104(10) of the Law (53 P. S. § 881.104(10)). The Board has promulgated rules and regulations in Chapters 81, 83, 85, 87 and 91. 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)), the Board submitted a copy of the notice of proposed rulemaking on October 1, 1998, to the

Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Local Government 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.

If the Commission has objections to any portion of the proposed amendments, it will notify the agency within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the agency, 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 members of the System and municipalities with pension plans in the System.

Effective Date

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

Sunset Date

A sunset date is not being established for these proposed amendments because they are necessary for the administration of the substantive provisions of the Retirement Law. 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 James B. Allen, Secretary, Pennsylvania Municipal Retirement System, P. O. Box 1165, Harrisburg, PA 17108-1165, within 30 days following the publication of the proposed amendments in the *Pennsylvania Bulletin*.

JAMES B. ALLEN,
Secretary

Fiscal Note: 49-1. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 16. COMMUNITY AFFAIRS****PART III. MUNICIPAL RETIREMENT BOARD****CHAPTER 81. GENERAL PROVISIONS****§ 81.1. Definitions.**

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

* * * * *

Active member—A municipal employe, municipal fireman or municipal policeman who is earning credited service in a System pension plan as a result of employment with a municipality that has enrolled in the System.

Actuarially equivalent—Annuities or lump sum amounts of equal present value determined by [multiplying the annual amount of the annuity by the appropriate cost factor for an annuity of \$1.00] appropriate actuarial factors based on mortality tables and interest rates currently adopted and used by the Board.

[*Annuitant*—A former contributor in receipt of a superannuation retirement allowance or other annuity-related benefit.]

Beneficiary—A person last designated in writing by a contributor or [an annuitant.] a retired member, or if one is not so designated, [the recipient shall be] the estate of the member or next of kin[,] under 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors), to the extent applicable.

* * * * *

Contributor—The term includes a member who has a member's account with the System, regardless of whether the account contains accumulated deductions.

Date of termination of service—[The] For an active member, the last day of [service for which a member makes contributions; or in the case of a member on leave without pay, the date of resignation or the date the employment is formally discontinued by the employer; or the date a member is placed on furlough] employment in a status covered by the eligibility requirements of the pension plan. For an inactive member, the date on which formal action is taken by the employer to separate the member from employment.

Fund—The Pennsylvania Municipal Retirement Fund created by the law.

* * * * *

Inactive member—A municipal employe, municipal fireman or municipal policeman who is enrolled in the System but is no longer earning credited service in a system pension plan as a result of separation from or leave from employment.

[*Intervening military service*—Active military service of a member who was a municipal employe immediately preceding his induction into the armed services or forces of the United States in order to meet a military obligation, excluding a voluntary extension of the service, but who becomes a municipal employe within 6 months of the expiration of the service. This excludes service of a member who leaves municipal employment in order to enter active military service, not in time of war or armed conflict, so long as no draft obligation exists under Federal law. It also excludes a municipal employe who voluntarily joins a National Guard reserve component requiring active military service, not in time of war or armed conflict, or as long as a Federal draft obligation does not exist.]

Law—The Pennsylvania Municipal Retirement Law (53 P. S. §§ 881.101—[881.413] 881.502.

[*Municipal employe*—In cases of doubt as to whether an individual is a municipal employe, for retirement purposes, the Board will, after consulta-

tion with the municipality, determine whether the individual is a municipal employe for membership eligibility.

Municipal fireman—In cases of doubt as to whether an individual is a municipal fireman, for retirement purposes, the Board will, after consultation with the municipality, determine whether the individual is a municipal fireman for membership eligibility.

Municipal policeman—In cases of doubt as to whether an individual is a municipal policeman, for retirement purposes, the Board will, after consultation with the municipality, determine whether the individual is a municipal policeman for membership eligibility.

Municipality—An institution substantially supported and maintained by a city, borough, town, township, county or jointly by any of these political subdivisions.

New member—This term applies to municipal employes or officers, whether elected or not, even though the person failed to join the system being in an optional category, and now is returning to the service of the municipality following a break in service.]

Optional membership—Shall be available to those categories of employes authorized by law, resolution or ordinance to elect or refrain from electing membership. If they choose not to join, the declination of membership shall apply for the period of time the [member serves] employes serve continuously in that optional category. If there is a break in service and the [optional member returns] employes return, the [member] members may not be permitted to purchase optional membership time previously declined, but may be [a member] members for future optional service, if the [member] employes so [chooses] choose. If the [member returns] employes return to service where there is mandatory membership, the [member] employe shall be required to join the [program] plan, on a prospective basis only.

Portability—The condition by which a member leaves the employ of a System administered plan and within 1 year of the date of termination of service enters into the employ of another System administered plan and the member elects to transfer previously accrued service credits to the new employer, subject to provision of municipalities' contracts.

* * * * *

Retired member—A former municipal employe, municipal fireman or municipal policeman, or the beneficiary or survivor annuitant of a municipal employe, municipal fireman or municipal policeman who is entitled to a monthly benefit payment from the retired member's reserve account of the System.

System—The Pennsylvania Municipal Retirement System created by the law [and as previously established by the Municipal Employes' Retirement Law (53 P. S. §§ 671—695) (Repealed), and the act of July 31, 1968 (P. L. 944, No. 291) (53 P. S. §§ 790.1—790.24) (Repealed)].

[*Vestee*] *Vested member*—A member after a stipulated age or with sufficient years of service, or both, based on the plan in which [*he*] *the member* is enrolled, who has terminated municipal service and has elected to leave [*his*] total accumulated deductions in the fund and to defer receipt of an annuity representing both the member's and municipal benefits, provided the election is made within 90 days after the effective date of termination of service.

§ 81.2. Applicability of regulations.

This chapter and Chapters 83, 85, 87 and 91 are equally applicable under all articles of the law.

§ 81.3. General powers of the Board.

[(a) The Board may contract for medical examiners who may review applications for disability allowances in order to determine whether the applicant is entitled, based on the medical evidence, to disability benefits under the law, whether service or nonservice-connected.

(b) The Board will approve an optional retirement plan for any category of municipal employe, provided the plan is not only actuarially sound but also the benefits derived therefrom are not in excess of the benefits authorized by the law or another existing retirement law pertaining to the particular class of municipality.]

The Board will act as an independent administrative board with all of the powers specified in section 104 of the law (53 P. S. § 881.104).

§ 81.4. [Preliminary actuarial] Actuarial investigation, tables and rates.

[The actuary shall perform a cost study, at no charge to the municipality, based on the tentative benefit plan which may be chosen by the municipality seeking to enroll in the system or, once enrolled in the system, to upgrade its benefits, which cost study shall form part of the basis of the contract with the Board supported by an ordinance or resolution, as the case may be, which shall be enacted by the municipal body.]

(a) Board adopted actuarial assumptions and tables shall be a part of and applied consistently to all System administered plans.

(b) In the preparation of actuarial studies intended to be used for the possible enrollment of plans into the System, the same actuarial assumptions and tables shall be used as are applied to existing, enrolled plans.

§ 81.5. [Information to municipalities] (Reserved).

[A circular of information distributed by the Board will be for informational and illustrative purposes only and will not prevent the Board from making changes therein. The contract between the Board and the municipality shall consist of an ordinance or resolution, as the case may be, plus an actuarial cost estimate based on the benefit plan selected.]

§ 81.6. [Election by municipalities to join retirement system] (Reserved).

[Even though employes, who are present members of an existing local retirement system, choose not to join the system, a municipality may never-

theless enroll based on the plan elected to cover employes of the municipality employed after the effective date of enrollment in the system. In this case, members of the existing local retirement plan may join the plan established under the law, within 3 years after enrollment in this system, but not thereafter, by a vote of 75% of the members of the existing local plan.]

§ 81.7. Retirement funds and accounts.

[In keeping separate accounts of each municipality for each separate class of employe enrolled by that municipality under any of the articles of the law, the Board will maintain, as a pooled account only, the total disability reserve account and reserve account of the retired member. In the event a municipality chooses to withdraw under provisions of the law and §§ 83.14, 85.16 or 87.12 (relating to withdrawal provisions), it may not be entitled to a refund or credit for moneys it has paid as a member municipality for the benefit of the pooled total disability reserve account.]

(a) The Board will consolidate for investment purposes the assets of the various plans. The Board will account separately for each plan's assets in a municipal account and each individual active member, inactive member and vested member's assets in a member's account. The Board maintains pooled accounts for retired members (the retired members' reserve account) and for the funding of disability benefits (the disability reserve).

(b) If a municipality withdraws the administration of its plan from the System, the municipality shall only be entitled to the assets credited to the plan's municipal account and the plan's members' accounts in accordance with the law. Assets that are actuarially determined by the Board's actuary to be matched to a withdrawing plan's retired members as of the effective date of withdrawal will also be returned to the plan in accordance with the law if there are sufficient funds in the retired member's reserve account to meet the actuarially determined liability of all retired members of the System, as of the date of withdrawal; otherwise payment shall be on a prorated basis.

§ 81.9. Management and investment of fund; interest credits.

(a) [As trustees of the fund, members of the] The Board will have the exclusive [management and control of] responsibility to manage the Fund with full power to invest [and reinvest] the moneys therein, subject [only] to [those] the terms, conditions, limitations and restrictions [otherwise] imposed by law [on] upon fiduciaries [and may, in order to facilitate the purchase and sale of securities, establish a nominee registration procedure]. The assets of the fund will be held in trust. No part of the assets of the fund may be used for or diverted to purposes other than for the exclusive benefit of the members, their spouses or the member's beneficiaries prior to the satisfaction of all liabilities of the fund with respect to them. The Fund will be used to pay reasonable administrative expenses of the System.

(b) To facilitate the purchase and sale of securities, the Board may establish a nominee registration process.

§ 81.10. [Municipal guarantee] Withdrawal provisions.

[In the event a municipality, which guarantees to make payments of the necessary reserves required to fund its obligations as a municipality member of the System, fails to submit payments within 90 days after billing, the Board may recover any sums due the fund by advising the appropriate Commonwealth official to withhold the payment of funds due the municipality for pension purposes, or may recover sums due by other appropriate legal remedy.]

(a) The Board may require an agreement to be entered into between the withdrawing municipality, if approval to withdraw is given, and the Board, terminating a contractual relationship previously entered into and fixing the respective rights of the parties. The Board may also require individual waivers or releases from affected members, if withdrawal is permitted, who will no longer be eligible for benefits from the System for the years of service rendered to the withdrawing municipality.

(b) Any plan withdrawing from the System that has retired members shall provide to the Board as a part of the withdrawal application an acknowledgment of the plan sponsor to assume responsibility for the providing of all future benefit payments for the existing retired members and beneficiaries effective with the withdrawal.

(c) The term "municipal employe" for the purpose of plan withdrawal includes active members, inactive member, vested members and retired members.

§ 81.11. Contract provisions.

(a) Plans enrolling or improving plan benefits under Article IV of the law (53 P. S. §§ 881.401—881.413) may not provide benefits in excess of or provide for member contribution rates less than those available to a municipality or a municipality's class of employes under existing law, including laws applicable to the establishment of pension plans.

(b) Plan improvements shall be determined on a total plan basis and not on a benefit by benefit comparison nor on an individual by individual comparison. An individual's accrued benefit may not be diminished by the implementation of an improved benefit plan contract.

§ 81.12. [Existing local retirement systems] (Reserved).

[(a) Section 81.6 (relating to election by municipalities to join retirement system) shall be equally applicable to this section. In the event that a municipality elects membership in the system, after the proper vote of its employes, the Board may, at its discretion, accept or reject, in whole or in part, the moneys or securities required to be provided by the municipality in order to finance its obligations as a member municipality of the system. The Board may create a subcommittee to review securities sought to be transferred, and may reject them in whole or in part, but an action of the subcommittee, shall be subject to Board approval. Securities not accepted may be converted into cash to help provide the required finances.

(b) Transfers made on a partially-funded basis may be completely liquidated within a period not in excess of 30 years.

(c) Except as otherwise provided in a contract between the Board and a municipality, no liability may attach to the fund created by the law for a retirement or pension benefit which shall be then paid by a municipality joining the system, having in existence a local plan. The liability, therefore, for continued pension payments shall attach against that municipality and not the fund created by the law.]

§ 81.13. [Monthly payments] (Reserved).

[Except in the event benefits under the law shall be paid in error, or contrary to the law or regulations, annuity payments, regardless of option chosen, shall be paid in equal monthly installments and may not be increased, decreased, revoked or repealed except as may be provided by specific statutory authority.]

§ 81.14. [Exemption of retirement allowance] (Reserved).

[Retirement allowances and contributions of members and moneys in the fund shall be exempt from a State or municipal tax and from a levy, attachment or other process whatsoever, including rights of the spouse, and shall be unassignable under circumstances except to a beneficiary properly designated in writing by a member to the Board.]

CHAPTER 83. MUNICIPAL EMPLOYES

§ 83.3. [Existing local retirement systems and compulsory] Compulsory and optional membership.

(a) [The provisions of §§ 81.6 and 81.12 (relating to election by municipalities to join retirement system; and existing local retirement systems) are equally applicable to this section.] Each municipality shall determine, subject to review and approval by the Board, the eligibility of its employes for membership in the System.

(b) [Municipalities may determine whether membership for elected officials and employes hired on a temporary and seasonal basis are compulsory, optional or prohibited. In the event that] If membership in a plan is optional, the [municipalities] municipality shall advise affected employes of the option and, within [90 days] 1 year after the optional membership is available to the employe, the [member] employe shall exercise the option or indicate in writing [his intention] that membership in the plan is not [desired] elected. The action is [deemed to be] irrevocable during the period of the continuous service of the employe.

(c) [Each municipality shall determine, subject to review and approval by the Board, the eligibility of its employes for membership in the System whether compulsory, optional or prohibited. Officers and employes paid wholly on a fee basis are not eligible to join the System.

(d) A municipality may establish a probationary period of no more than 1 year, in which it may elect

to refrain from enrolling employes in the System.] Each municipality shall supply the Board with its rules regarding a probationary period for plan membership and the period shall be uniform for all employes. An employe in the probationary status, if subsequently enrolled [in the System] may not be eligible for service credit for the time served in the probationary period.

[(e) Each municipality shall supply the Board with its rules regarding a probationary period and the period shall be uniform for employes.]

§ 83.4. [Service allowance; change of employment; military service] (Reserved).

[(a) An original member who was employed at the time the municipality joined the System is entitled to full credit for each year of service rendered to the municipality prior to its enrollment, regardless of whether the prior service was continuous and each original member shall receive a certificate indicating the amount of prior service.

(b) A member absent from service without pay is not entitled to service credit unless specially allowed by the municipality with the approval of the Board.

(c) In the event a member with prior service credits enters into the employment of another municipality, the credits shall remain unimpaired but the unpaid municipal liability therefore shall be prorated between municipalities on an equitable basis.

(d) An active member with credit of not less than 6 months service and who is inducted into active military service in times of war, armed conflict or national emergency is entitled to intervening military service credit during the continuance of the period of time provided he has returned to his employment within 6 months following his separation from active military service. The municipality shall continue making current service contributions toward the municipal annuity of an active member who is on intervening military service. An active member desiring to purchase credit toward the member's share of an annuity for the intervening military service shall file an application to purchase the credit. The contribution required for this purchase shall be computed by applying the contribution rate of the member to his compensation at the time of his entry into active military service, multiplying the same by the number of years and fractional parts thereof of the service together with the regular interest from the date the employe returns to his employment, which shall be within 6 months, to the date of purchase. The amount due may be paid through regular monthly payments during active military service or by lump sum within 30 days after billing is made. In the event these methods are not chosen, then payment shall be made through salary deductions amortized with regular interest through the repayment period of 1, 2, but not more than 3 years, with regular interest charged through the applicable repayment period chosen by the member and approved by the Board.

(e) A member may also purchase credit for nonintervening active military service for a period, not in excess of 5 years, provided that he has

completed at least 5 years of credited service for retirement purposes, with the municipality subsequent to the active military service. The service shall be determined by the date of entry of the municipality into the System. If the member's separation from active military service is prior to the date of the municipality's membership, it shall be treated, when credit is purchased, as prior service credit. The amount due for the purchase shall be computed by multiplying the sum of the basic contribution rate of the member and the current contribution rate of the municipality during its first year of entry into the System, based on the initial entry salary of the member, multiplied by the number of years, or fractional parts of a year, of service sought to be purchased together with regular interest from the date of employment of the member to the date of purchase. The amount will be certified by the Board in conformity with methods of calculation approved by the actuary and may be paid in a lump sum within 30 days after billing or through salary deductions amortized with regular interest through a repayment period of 1, 2, but not more than 3 years, with regular interest charged through the repayment period chosen by the member and approved by the Board.

(f) In the event the separation of the member from active military service occurred subsequent to the enrollment of the municipality in the System, the credit purchase for the nonintervening service shall be considered as current service credit. The amount due by the member for the current service credit for nonintervening service is computed by applying his basic contribution rate plus the normal rate of the member for current service in effect when the member entered the employ of the municipality, multiplied by the average annual rate of compensation over the first 5 years of his subsequent employment and multiplied again by the number of years, or fractional parts of a year sought to be purchased, plus regular interest from the date of employment to the date of purchase. The amount due will be certified by the Board in conformity with methods of calculation approved by the actuary, and may be paid in a lump sum within 30 days after billing, or through salary deductions amortized with regular interest through a repayment period of 1, 2, but not more than 3 years, with regular interest charged through the repayment period chosen by the member and approved by the Board.

(g) In cases in which military service is to be purchased, the interest charged shall be that in effect and being credited to the contribution accounts of the member on the date that the application for the service is filed with the Board.

(h) Requests for purchases may be granted only if the applicant's discharge or separation from service was granted under other than dishonorable conditions and proof of the nature of the discharge or separation must accompany the application for credit for military service, whether intervening or nonintervening.

(i) Limitations shall be as follows:

(1) A member is not eligible for credit for nonintervening military service if the service entitles him to receive now or in the future, or if he is receiving, a governmental pension based on the

nonintervening military service, irrespective of the fact that the member may have actual military service in excess of the minimum amount necessary to qualify him for the pension.

(2) The crediting of nonintervening military service shall also be unavailable to anyone who is in a reserve component of the Armed Forces or the National Guard of a state or territory, regardless when that person may actually be entitled to receive a Federal pension based on the service.

(3) A member who is receiving disability compensation based on a service-connected injury or illness as a result of active military service shall be eligible for credit for nonintervening military service.

(4) In all cases, military service shall be limited to active military service rendered only to the Armed Forces of the United States.

(5) In order to be eligible for the purchase of nonintervening military service, a member shall have rendered 5 years of subsequent service to the municipality, for which retirement credit is allowed, but he may purchase military service at a time prior to termination of service provided he pays the amount due, plus regular interest up to the date of purchase as elsewhere provided in this section. The service purchase shall be unavailable to those persons rendering service to the municipality subsequent to active military service if the service is not eligible for retirement credits.]

§ 83.5. [Determination of municipal liability] (Reserved).

[In order to insure that a future service liability may be fully funded on an actuarial basis, the municipal liability for prior service may be funded over a period not exceeding 30 years. A municipality may limit the purchase of prior service to 10 years for each original member toward the municipal annuity if it so chooses. The municipality shall also pay annually for current service costs.]

§ 83.6. Contributions by members[; consolidation of credits; change of employment].

(a) [The contributions made by members shall vary depending on the plan selected by the municipality but shall approximate sufficient contributions to acquire a member's annuity at superannuation retirement age of 1/250 of the final salary on which Social Security benefits are payable and 1/125 of the final salary in excess of the benefits for each year of credited service, after the municipality joined the System.

(b) To the extent that the municipality does not assume the responsibility of purchasing the prior service of the member to increase his annuity, the member has the option of making contributions for the purchase of the prior service.

(c) [Contributions required to be made by [the] a member may not[,] be paid by the municipality under any circumstances[, except the agreement of the municipality to purchase prior service under section 205 of the law (53 P. S. § 881.205) be made by the municipality on behalf of the member] other than the provisions of section 414(b)(2) of the Inter-

nal Revenue Code (26 U.S.C.A. § 414(h)(2)). If an employe is simultaneously employed by more than one municipality, [he may] or in positions that make the individual eligible for membership in more than one plan, the member shall receive credit for concurrent service [not to exceed 1 year of total service credit for each year served, although it is rendered to more than one municipality simultaneously, but he may be credited with the cumulative amount of compensation earned for that period. This portion of the annuity of the member shall be computed separately] for each plan, and the member's compensation for each plan shall be considered separately for benefit purposes.

§ 83.7. [Withdrawal; return to service; death in service; purchase] Purchase requirements for previous service.

[(a) A contributor who ceases to be a municipal employe may elect to receive his accumulated deductions and forfeit any benefit to which he would otherwise be entitled; or elect to vest his account, and receive a retirement allowance upon attaining superannuation retirement age provided that he has the requisite years of service to qualify for the vesting privilege; or elect to take a withdrawal allowance if he has the requisite years of service, irrespective of age; or to receive a superannuation retirement allowance if eligible.

(b) A former contributor electing to withdraw his accumulated deductions may, upon a subsequent return to service, restore to the fund his withdrawal accumulated deductions and have his annuity rights restored as they existed upon his previous separation from service. If an annuitant returns to full-time regular employment, his annuity payments shall cease. The person shall, for contributions made and service rendered thereafter, add to the entitlements on account of future retirement. If an annuitant is reemployed on a full-time basis and earns more than \$2500 or any amount as provided by law, or approved by the Board, as the case may be, his annuity shall be discontinued and he shall be required to repay the Board for the months during which he had earnings and received the annuity. He shall, however, be entitled to membership as an active employe during periods for which he was employed in a full-time category, whether membership was mandatory or optional.

(c) If an annuitant is reemployed on a temporary or seasonal basis, although in a full-time capacity, earning from the employment an annual amount less than \$2,520 or an amount as provided by law or approved by the Board, as the case may be, he shall be entitled to retain those earnings and receive his monthly annuity provided the municipality notifies the Board that the annuitant has not exceeded the limitations of section 207(c) of the law (53 P. S. § 881.207(c)).

(d) If a contributor dies in service prior to his eligibility for an annuity, his accumulated deductions shall be payable to his beneficiary or his estate, as the case may be, subject to the limitations of 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors), with respect to next-of-kin payments, provided, however, that if there is less

than \$100 in the contributor's account, it may be paid to an undertaker or to a person paying the claim of the undertaker under the condition established by section 207(d) of the law (53 P. S. § 881.207(d)).

(e)] A former contributor who has withdrawn [his] total accumulated deductions may, upon a subsequent return to service, restore to the fund those accumulated deductions representing [his] that member's previous service and continue accruing service credits for service rendered subsequent to the return to service, provided [he] the member pays the amount due thereon plus regular interest up to the date of purchase in a lump sum within 30 days after billing, or through salary deductions amortized with regular interest through a repayment period of [1, 2, but] not more than [3] 5 years, provided [, further,] that regular interest is charged through the repayment period chosen by the member and approved by the Board.

§ 83.8. [Superannuation retirement] (Reserved).

[A member, eligible to retire, may do so by filing an application setting forth the date of retirement provided it is filed with the Board in a timely fashion. If an application is received after the date set forth in the application it shall take effect on the date specified in the application or the day immediately following the date of termination of service, whichever is later. If the application is filed with a prospective effective date it may not take effect until that date is reached. An application may not be filed with an effective date more than 90 days after the date of filing or the date deposited in the mail. Once a member has filed an application for benefits, which has already taken effect, and chosen the options provided by law, including a single-life annuity option, the option shall be deemed to be irrevocable, except where an annuitant returns to service and his annuity ceases, as otherwise provided in this part.]

§ 83.9. [Death benefits] (Reserved).

[(a) If a municipality elects to provide death benefit protection to members of its plan, a member having reached superannuation age or completed 24 years of service, may file an application for benefits with the Board to take effect as of the time of his death electing one of the options provided in section 211 of the law (53 P. S. § 881.211), which application will be held by the Board until a later application is appropriately filed or until the death of a contributor in service, at which time, the member is considered to have retired under the latest application on file as of the day immediately preceding death.

(b) If no application is filed by a member, having reached superannuation age or 24 years of total service, and he dies in service he shall, for purposes of death benefit protection, be considered as having elected Option 1. The benefits payable to the designated beneficiary or the estate, as the case may be, shall be paid in a lump sum. However, if the balance is \$5,000 or more, the beneficiary may elect to receive some or all of the benefits in the form of an annuity.]

§ 83.10. [Early retirement] (Reserved).

[A member may retire voluntarily after 24 years of service, or involuntarily after 8 years of service, not having achieved superannuation age, and be entitled to receive a withdrawal allowance; or vest under the applicable provisions of the law; or, by electing to receive a refund of his accumulated deductions, forfeit other benefits to which he would otherwise be entitled.]

§ 83.11. Options on superannuation or early retirement.

(a) [A member eligible to retire under the provisions of the law may only be entitled to select a single-life annuity payable throughout his life or the annuities similarly payable under Option 1, Option 2 or Option 3, as set forth in section 211 of the law (53 P. S. § 881.211).

(b) In no event may a member receive the present value of his account in a lump sum payment, in whole or in part, in his lifetime except to receive his accumulated deductions, in lieu of benefits to which he would otherwise be entitled.

(c) The filing of an effective application selecting the options provided in section 211 of the law (53 P. S. § 881.211) is deemed to be irrevocable.]

Once a member has filed an application for a benefit, and the member has received and cashed the first benefit payment check, the selected retirement benefit option of the member shall be irrevocable unless the retired member returns to active service to the plan from which the member retired. Only the member may change a benefit option.

(b) A plan enrolled in the system may not allow for the present value of a living member's benefit to be paid in one lump sum. The municipal portion of the annuity payment shall be paid in a monthly annuity payment option.

§ 83.12. Disability retirement.

(a) [Subject to the filing requirements of § 83.8 (relating to superannuation retirement), a member may be eligible for disability retirement if he has 10 or more years of total service or, if the disability is service-connected, no minimum period of service may be required. The contributor shall be determined to be medically disabled and unable to engage in gainful occupation. A disability benefit shall be reduced by the amount of payment made to a member under the provisions of The Pennsylvania Workmen's Compensation Act (77 P. S. §§ 1—1024) or The Pennsylvania Occupational Disease Act (77 P. S. §§ 1201—1603).

(b)] Disability applications shall be accompanied by medical documentation on forms supplied by the Board to enable the Board's medical examiners to review and determine whether the applicant is medically disabled and prohibited from engaging in a gainful occupation.

[(c) The Board may, if benefits are granted, require a disability annuitant, while still under superannuation age, to undergo annual medical examinations to determine whether the annuity shall be continued or discontinued. If an annuity is discontinued because of the annuitant's improving

medical condition and he has at least 8 years of service, he shall be entitled to an early retirement allowance.

(d) If a disability annuitant refuses to submit to a medical examination, if so requested, his annuity shall be discontinued until he agrees to submit to the examination. If his refusal to submit to an examination continues for one full year then his rights to a disability allowance or an early retirement benefit shall be forfeited.]

[(e)] (b) The Board may require the earnings reports as it may deem necessary to insure that a disability annuitant is unable to engage in a gainful occupation.

§ 83.13. [Vesting] (Reserved).

[(a) If a member terminates service with at least 12 years of total service, he may elect to vest his account, provided an application is filed with the Board within 90 days of termination. In lieu thereof, he may elect to receive his accumulated deductions and forfeit any other benefit to which he would otherwise be entitled or elect an early retirement allowance under section 208 of the law (53 P. S. § 881.208) or a regular retirement allowance on a deferred basis in accordance with the provisions of section 210 of the law (53 P. S. § 881.210).

(b) In the event that a contributor vests his account and elects a deferred annuity to take effect upon his attaining of superannuation age but dies before achieving that age, his estate or designated beneficiary shall be paid the total accumulated deductions standing to his credit at the date of his previous termination of service. In the absence of a timely election to vest, a terminated municipal employe may not be eligible to vest. At a later date, the member shall, however, be eligible to file for an annuity benefit or return of accumulated contributions as they stood at termination of service, but may not be eligible for death benefits beyond 90 days after termination of service or the accumulation of interest beyond the date of termination of service. In the event he applies for an annuity, being so eligible, it shall take effect upon filing of the application.]

§ 83.14. [Withdrawal provisions] (Reserved).

[A municipality desiring to withdraw from the system shall file an application for withdrawal, under section 214 of the law (53 P. S. § 881.214), under the following criteria:

(1) The municipality is a member of the system for a minimum of 5 years before the application is filed.

(2) The municipality shall state the reason for requesting the withdrawal.

(3) The municipality shall submit, with the withdrawal application, a valid ordinance or resolution, as the case may be, passed by the governing body, signifying its intention to withdraw.

(4) The application shall contain a certification that an affirmative vote, approving withdrawal from the system, has been obtained from at least 75% of the municipal employes affected.

(5) The Board shall then determine whether the municipality has met its financial obligations to the system.

(6) The liability for the continuation of retirement or disability allowances being paid from the fund shall attach against the withdrawing municipality and be paid from funds transferred to a retirement system established subsequent to its withdrawal from the system or from moneys appropriated annually from municipality tax revenues sufficient to pay the same.

(7) The Board will take action on withdrawal within 90 days from the receipt of the application filed by the municipality for permission to withdraw from the system.

(8) If the Board approves the application, the withdrawing municipality shall be entitled to receive a net refund of the amounts then standing to the credit of the municipality in the member's account, the municipal account and the retired member's reserve accounts of the system. In no event, may the total amount of the net refund to the municipality exceed the pro rata interest of the withdrawing municipality in the net assets of the entire fund based on the market value of the investments of the fund as of the date of receipt of the application for permission to withdraw.

(9) The Board may disapprove the application for permission to withdraw from the system within 90 days of the original filing and advise the municipality of its reason for disapproval.

(10) The Board may require an agreement to be entered into between the withdrawing municipality, if approval to withdraw is given, and the Board, terminating a contractual relationship previously entered into and fixing the respective rights of the parties. The Board may also require individual waivers or releases from affected employes, if withdrawal is permitted, who will no longer be eligible for benefits from the system for the years of service rendered to the withdrawing municipality.]

§ 83.15. [Procedures for amending contracts] (Reserved).

[Upon application, a municipality may upgrade its benefits under Article II of the law (53 P. S. §§ 881.201—881.215) by entering into a contract with the Board under the benefit provisions available under Article IV of the law (53 P. S. §§ 881.401—881.413). The Board will not, and the municipality may not, enter into a contract which decreases benefits or which provides benefits in excess of that available under the law or another existing law pertaining to that class of municipality. A plan to upgrade benefits shall, prior to its approval, be determined by the actuary to be actuarially sound. Additional costs or benefit increases shall be the responsibility of the municipality and its member employes based upon the benefit plan selected and approved by the Board.]

CHAPTER 85. MUNICIPAL FIREMEN AND MUNICIPAL POLICE

(Editor's Note: As part of this proposal, the Board is proposing to delete the existing text of §§ 85.1 and 85.3—85.17, which appears at 16 Pa. Code pages 85-1—85-4, serial pages (114281)—(114284).)

CHAPTER 85. (Reserved)**§ 85.1. (Reserved).****§§ 85.3—85.17. (Reserved).**

(Editor's Note: As part of this proposal, the Board is proposing to delete the existing text of §§ 87.1—87.13, which appears at 16 Pa. Code pages 87-1—87-4, serial pages (114285)—(114288).)

CHAPTER 87. (Reserved)**§§ 87.1—87.13. (Reserved).****CHAPTER 91. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE****§ 91.1. Applicability of general rules.**

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), is applicable to the activities of and proceedings before the [**Municipal Retirement**] Board.

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