

PROPOSED RULEMAKING

DEPARTMENT OF BANKING

[10 PA. CODE CH. 46]

Proper Conduct of Lending and Brokering in the Mortgage Loan Business

The Department of Banking (Department) proposes to add Chapter 46 (relating to proper conduct of lending and brokering in the mortgage loan business) under the Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.101—456.3101), the Secondary Mortgage Loan Act (7 P. S. §§ 6601—6627) and the Consumer Discount Company Act (7 P. S. §§ 6201—6219) (collectively “acts”).

Purpose of Proposed Rulemaking

The Department is proposing this rulemaking because in the past decade the mortgage loan business has significantly increased in complexity and competitiveness, resulting in a drastically changed borrowing landscape. Unfortunately, because of this complexity and competitiveness, borrowers may not understand the loan products offered to them or the process of obtaining a loan. The Department also believes that there are individuals and entities in the mortgage loan business who take advantage of borrowers by placing them in loan products they are not reasonably capable of repaying. Therefore, the Department is proposing this rulemaking governing the proper conduct of lending and brokering to persons and entities operating in the mortgage loan business under the acts.

Explanation of Proposed Requirements

This proposed rulemaking provides regulations for the proper conduct of lending and brokering in the mortgage loan business for licensees under the acts. The proposed rulemaking sets forth requirements for additional disclosures regarding the terms of offered loans and for licensees to perform an ability to repay analysis when offering loans to consumers. The proposed rulemaking also prohibits certain practices in the mortgage loan process that harm consumers and businesses alike.

Entities Affected

Existing and future licensees under the acts will be affected by the proposed rulemaking.

Costs and Paperwork Requirements

The proposed rulemaking will have no fiscal impact on the Department, the Commonwealth or its political subdivisions. The proposed rulemaking will fiscally impact licensees under the acts to the extent licensees may need to incur costs to alter or revise current business practices to comply with the regulations.

Effectiveness/Sunset Date

Proposed § 46.2(b)—(e) will be effective 90 days from final-form publication in the *Pennsylvania Bulletin*. The remaining provisions of the proposed rulemaking will be effective immediately upon publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 5, 2007, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory

Review Commission (IRRC) and to the Chairpersons of the House Committee on Commerce and the Senate Committee on Banking and Insurance. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking within 30 days after publication in the *Pennsylvania Bulletin* to the Office of Chief Counsel, Department of Banking, Attention: Public Comment on Regulation 3-43, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101-2290, (717) 787-1471.

VICTORIA A. REIDER,
Acting Secretary

Fiscal Note: 3-43. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 10. BANKS AND BANKING

PART IV. BUREAU OF CONSUMER CREDIT AGENCIES

CHAPTER 46. PROPER CONDUCT OF LENDING AND BROKERING IN THE MORTGAGE LOAN BUSINESS

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

Sec.

- 46.1. Definitions.
- 46.2. Proper conduct of lending and brokering in the mortgage loan business.
- 46.3. Enforcement.

§ 46.1. Definitions.

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

Advertising—As defined in 12 CFR 226.2(a)(2) (relating to definitions and rules of construction).

Applicant—A person who submits an application for a loan.

Application—As defined in 24 U.S.C.A. § 3500.2(b) (relating to definitions).

CDCA—The Consumer Discount Company Act (7 P. S. §§ 6201—6219).

Consummation—As defined in 12 CFR 226.2(a)(13).

Covered loan—As defined in section 503 of the MB-BCEPA (63 P. S. § 456.503).

First mortgage loan—A mortgage loan as defined in section 302 of the MBBCEPA (63 P. S. § 456.302).

Income—As defined in 26 U.S.C.A. § 61 (relating to definitions).

Licensee—A licensee under the MBBCEPA, SMLA, CDCA or a partially exempt entity under the MBBCEPA.

Loan—

(i) A first mortgage loan or secondary mortgage loan, or both, as the context may require.

(ii) The term does not include a covered loan.

MBBCEPA—The Mortgage Bankers and Brokers and Consumer Equity Protection Act (63 P. S. §§ 456.101—456.3101).

Mortgage loan business—The first mortgage loan business as defined in section 302 of the MBBCEPA, the secondary mortgage loan business as defined in section 3(a)(5) of the SMLA (7 P. S. § 6603(a)(5)), and any kind of mortgage lending or brokering activity conducted by a licensee under the CDCA.

Person—A person as defined in section 302 of the MBBCEPA, section 2 of the SMLA (7 P. S. § 6602) and section 2 of the CDCA (7 P. S. § 6202), as applicable.

SMLA—The Secondary Mortgage Loan Act (7 P. S. §§ 6601—6627).

Secondary mortgage loan—A secondary mortgage loan as defined in section 2 of the SMLA.

§ 46.2. Proper conduct of lending and brokering in the mortgage loan business.

(a) *Advertising.* A licensee may not engage in false or misleading advertising.

(b) *Disclosures to applicant.* On a form prescribed by the Department and signed and dated by the applicant and the licensee, a licensee who has contact with the applicant shall disclose the following to the applicant no later than 3 business days after the application is received or prepared by the licensee:

(1) If the lender providing the loan will escrow the applicable taxes and insurance.

(2) If the licensee is a lender with the ability to directly lock-in a loan interest rate.

(3) Whether the loan contains a variable interest rate or balloon payment feature.

(4) Whether the loan includes a prepayment penalty.

(5) Whether the loan has a negative amortization feature.

(c) *Required redisclosures.* A licensee who has issued the disclosure form required by subsection (b) shall issue an updated disclosure form at the time the licensee knows or reasonably should know that the initial disclosure form is inaccurate.

(d) *Required retention of disclosure form.* A licensee shall retain the disclosure form required by subsections (b) and (c) in the applicant's loan file.

(e) *Evaluation of applicant ability to repay.*

(1) A licensee may not offer a loan without having reasonably determined, based on the documents and information provided under this subsection, that the applicant will have the ability to repay the loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule.

(2) In performing an analysis to determine whether an applicant will have the ability to repay a loan, a licensee shall consider, verify and document the following:

(i) Income of the applicant.

(ii) Fixed expenses of the applicant.

(3) A licensee may consider and document information in addition to verified income and fixed expenses as required in paragraph (2) in determining an applicant's ability to repay an offered loan, provided that the additional factors are reasonably related to an applicant's ability to repay.

(4) A licensee may not primarily rely upon the sale or refinancing of an applicant's collateral in determining an applicant's ability to repay an offered loan.

(5) The records, worksheets and supporting documentation used in the licensee's ability to repay analysis shall be maintained in the applicant's loan file.

(6) In determining an applicant's ability to repay a loan offered under this subsection, a licensee may not ignore facts or circumstances that it knows or reasonably should know which would indicate that an applicant does not have the ability to repay the offered loan.

(7) In addition to the analysis required by this subsection, great weight and due consideration shall be given to the "Guidance on Nontraditional Mortgage Product Risks," as amended, issued by the Department in establishing a licensee's internal procedures and guidelines when implementing the ability to repay analysis required by this subsection.

(f) *Loan transaction prohibitions.* A licensee may not:

(1) Advise or imply to an applicant that the applicant's income is not relevant to the loan transaction.

(2) Recommend or imply that an applicant default on any existing contract or financial obligation.

(3) Advise or induce an applicant to refinance an existing loan or otherwise enter into a new financial obligation without performing the ability to repay analysis required by subsection (e).

(4) If an applicant qualifies for a loan offered by the licensee, offer to the applicant a covered loan without advising the applicant that the applicant qualifies for a loan other than a covered loan.

(5) Advise or imply that an applicant should ignore any required disclosures or suggest that a document or the execution of any document is unimportant or of no consequence.

(6) Direct, encourage, permit or otherwise be involved with the improper execution of any document, including:

(i) Requesting or allowing an applicant to sign documents that contain blank spaces where material information regarding the loan transaction is required.

(ii) Permitting the execution of documents where signatures are required to be witnessed without the witnesses being physically present.

(iii) Permitting someone other than the required signatory to execute a document unless otherwise authorized by law.

(7) Knowingly submit or permit or encourage an applicant or third party to submit, false or misleading information, or information that the licensee reasonably should know is false or misleading, to any party to a loan transaction.

(8) Improperly influence, or attempt to improperly influence:

(i) An appraiser by committing any act or omission that is intended to:

(A) Compromise the independent judgment of an appraiser.

(B) Ensure that an appraisal matches a requested or target value.

(ii) Any other entity related to the mortgage loan business, such as notaries, title companies, real estate agents, builders and sellers of properties.

(9) Obtain insurance required for a loan for an applicant at loan consummation without providing the applicant with the opportunity to secure or provide evidence of his own insurance.

(10) Charge an applicant a fee for any legally required notices or disclosures unless otherwise authorized by law.

(11) Pay compensation to or receive compensation from, contract with, or employ any person engaged in the mortgage loan business who is not licensed or otherwise exempt from licensure.

(12) Render legal advice to an applicant.

(g) *Loan funding.*

(1) A licensee lender may not refuse or fail to fund a consummated loan, other than when an applicant rescinds the loan in accordance with 12 CFR 226.15 or 226.23 (relating to right of rescission), as applicable.

(2) A licensee lender shall fund a consummated loan in a reasonable time period after consummation of the loan or in accordance with any commitment or agreement with the applicant; provided that, if an applicant has a right of rescission under 12 CFR 226.15 or 226.23, a licensee lender is not required to fund a consummated loan in accordance with this subsection until after the applicable rescission period has ended.

(3) Any postclosing underwriting or quality control review conducted by a licensee lender after the consummation of a loan may not delay the funding of a loan or result in a failure or refusal to fund the loan in accordance with this subsection.

(4) A licensee shall disburse loan funds in accordance with any commitment or agreement with the applicant.

(h) *Licensee responsibility to provide documents.* A licensee shall provide to an applicant or authorized representative of an applicant, unless prohibited by Federal or State law, copies or originals of the documents associated with a loan that an applicant has paid for or signed, such as loan applications, appraisals, surveys, loan documents, disclosures and any fee agreement executed by the applicant and the licensee.

(i) *Payoff statement or statement of mortgage reinstatement.* A licensee lender shall provide a borrower with payoff statements or statements of mortgage reinstatement, as applicable, for the borrower's loan within 7 business days of receipt of a written request by a borrower or a person authorized by the borrower.

§ 46.3. Enforcement.

Violations of the provisions of this chapter shall be violations of the MBBCEPA, SMLA and CDCA, as applicable.

[Pa.B. Doc. No. 07-1278. Filed for public inspection July 20, 2007, 9:00 a.m.]

LIQUOR CONTROL BOARD

[40 PA. CODE CHS. 1, 3, 5, 7, 11, 13 AND 17]

License Applications and Management Contracts

The Liquor Control Board (Board), under the authority of section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), proposes to amend Chapters 1, 3, 5, 7, 11, 13 and 17 to read as set forth in Annex A.

Summary of the Proposed Rulemaking

The proposed rulemaking adds two definitions, establishes regulations for management agreements, implements contractor responsibility requirements, amends procedures for wine and spirits tastings in stores and amends rules of hearing procedure. Obsolete regulations regarding cleaning draft beer systems are updated. Following are summaries of the proposed amendments:

The proposed rulemaking defines the terms "merchant" and "pecuniary interest."

The proposed rulemaking clarifies that the reputation of stockholders, directors, officers and members of corporate or other business entity licensees will be considered in assessing the reputation of the licensee.

The proposed rulemaking revises procedures for receiving certificates of completion from applicants for license transfers. Revised procedures effective in November 2004 proved to be more difficult in practice.

The proposed rulemaking establishes rules and procedures for approval of management agreements and sets a fee for review of agreements.

The proposed rulemaking recognizes that licensees are using new technology to assure that malt or brewed beverage dispensing systems are clean.

The proposed rulemaking codifies the Board's established practice that the purchase price for transfers of licenses that involve changes in ownership must be placed into escrow.

A section is proposed to require tax clearance for all merchant licensees.

The proposed rulemaking amends regulations on "tasting events" to clarify the amount of alcoholic beverages that may be given. It also allows sponsors of in-store tastings to import into this Commonwealth products to be tasted rather than making them buy the products from the Board. It also allows partially-consumed bottles being used for tasting to be stored at wine and spirits stores, rather than requiring that they be discarded.

The proposed rulemaking amends hearing procedures related to issuance of subpoenas and the time for filing protests.

Affected Parties

The proposed rulemaking will affect licensees and applicants for licenses issued by the Board. It will affect merchants that sell or propose to sell liquor and liquor accessories to the Board and anyone participating in a hearing before the Board.

Paperwork Requirements

The proposed rulemaking will not significantly increase paperwork for the Board or most of the regulated community. Merchants that sell or propose to sell liquor and liquor accessories to the Board will have to present evidence that they do not have any outstanding or unresolved tax liabilities to the Commonwealth.

Fiscal Impact

Implementing a requirement of tax clearance for merchant licensees will require the addition of two additional Technician 1 positions. Program changes will require about 37.5 hours of Application Developer 2 time in the Bureau of Management Information Systems. The first year cost increase is estimated to be \$92,082.

In an unlikely, but worst-case, scenario, if sponsors of in-store tastings universally choose not to purchase their products from the Board, as permitted by these regulations, the estimated loss of gross revenue would be around \$200,000 annually.

Effective Date

This proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comment/Contact Person

Written comments, suggestions or objections will be accepted for 30 days after publication of the proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be addressed to James F. Maher, Assistant Counsel, Office of Chief Counsel, Liquor Control Board, Room 401, Northwest Office Building, Harrisburg, PA 17124-0001.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 17, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Liquor Control Committee and Senate Committee on Law and Justice. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

PATRICK J. STAPLETON, III,
Chairperson

Fiscal Note: 54-63. (1) State Store Fund; (2) Implementing Year 2006-07 is \$92,000; (3) 1st Succeeding Year 2007-08 is \$96,000; 2nd Succeeding Year 2008-09 is \$98,000; 3rd Succeeding Year 2009-10 is \$100,000; 4th Succeeding Year 2010-11 is \$102,000; 5th Succeeding Year 2011-12 is \$104,000; (4) 2005-06 Program—\$322,377,000; 2004-05 Program—\$297,495,000; 2003-04 Program—\$285,788,000; (7) General Operations; (8) recommends adoption.

Annex A

TITLE 40. LIQUOR

PART I. LIQUOR CONTROL BOARD

CHAPTER 1. GENERAL PROVISIONS

§ 1.1. Definitions.

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

* * * * *

Merchant—An importer, winery, limited winery brewery, distillery or vendor desiring to sell spirits or wine to the Board; or, any seller of products the Board is permitted to sell in its stores under section 305 of the Liquor Code (47 P. S. § 3-305).

Pecuniary interest—The capability of a person to control the business of the licensee. There is a rebuttable presumption of a pecuniary interest when a person controls a substantial portion of the proceeds of the licensed business or when control is exercised by one or more of the following:

- (i) Employing a majority of the employees of the licensee.
- (ii) Independently making day-to-day decisions about the operation of the business.
- (iii) Having final authority to decide how the licensed business is conducted.

§ 1.5. Reputation: Use of criminal and citation history.

(a) When considering whether a person is reputable or the repute of a person under any section of the Liquor Code or this title, the Board may consider whether that person has been convicted of any crimes including misdemeanors and felonies, the person's history regarding licenses issued by the Board, including the citation history of the licenses, and any other factor the Board deems appropriate.

(b) When considering the reputation of a corporation, partnership, limited liability company or other business entity, the Board may consider the reputation of its stockholders, directors, officers, managers or members.

CHAPTER 3. LICENSE APPLICATIONS

Subchapter A. GENERAL PROVISIONS

§ 3.8. Certificate of completion; [certificate of approval;] letter of authority.

(a) Upon Board approval of an application for new license, transfer of a license or extension of premises, the Board will issue a [certificate of approval] letter of operating authority to the applicant. [The Board will also issue a letter of authority which shall authorize the applicant to operate the licensed premises for no more than 30 days. If the application is for an extension of premises, the letter of authority shall be effective immediately. If the application is for a new license, the letter of authority shall be effective when the applicant acquires the right to occupy the premises. If the application is for the transfer of a license, the letter of authority shall be effective upon completion of the underlying financial transaction. Within 15 days of completion of transactions necessary to complete the process,] The letter of operating authority confers upon the applicant the immediate right to operate the licensed premises and the immediate responsibility as a licensee. The letter of operating authority may list conditions the applicant shall complete before a license is issued.

(b) Within the time specified by the Board in the letter of operating authority, the applicant shall submit a certificate of completion to the Board, indicating that the financial arrangements were completed as reported or modified. The certification [shall] must be on forms provided by the Board. [If the application is a

transfer application, then the certificate of completion must be signed by the transferor and the transferee. Failure to submit a properly executed certificate of completion may void the approval.]

[(b)] (c) If the certificate of completion is not submitted or discloses modified arrangements, the Board may request additional information or documentation, as it deems necessary.

[(c) If the certified modifications are such that the eligibility of the applicant or premises would not be affected, the Board will take no action against the applicant.]

(d) If the certificate of completion is not submitted, or additional information the Board has requested is not provided, or if the additional information indicates that the application does not conform to the Liquor Code or this title, the Board may rescind its approval, order divestiture of individuals or take other remedial action as it deems necessary.

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

Subchapter M. MANAGEMENT CONTRACTS

Sec.

- 3.141. Management contracts.
3.142. Reporting.
3.143. Board approval and licensee responsibility.

§ 3.141. Management contracts.

(a) A licensee may contract with another person to manage its licensed premises.

(b) Management contracts must reserve to the licensee the capability to direct its own business.

(c) Management contracts must be in writing, and a copy shall be maintained on the licensed premises where it shall be available for inspection by the Board.

(d) Management contracts may not give a pecuniary interest to a management company.

§ 3.142. Reporting.

(a) Licensees or applicants for licenses that have management contracts shall file the following:

(1) The identity of all persons who are parties to the management contract, on forms supplied by the Board.

(2) Tax certification and clearance statements for the person providing management services under section 477(g) of the Liquor Code (47 P. S. § 4-477(g)) on forms supplied by the Departments of Revenue and Labor and Industry.

(b) Licensees or applicants for licenses that enter into, modify or terminate management contracts shall, within 30 days, file a written notice with the Board that this has occurred. The changes shall be reported on forms which will be furnished upon request by the Board.

(c) Licensees filing notice of the establishment or modification of a management contract shall pay a fee of \$350. No fee is payable when a licensee gives notice to the Board that a management contract has been terminated.

§ 3.143. Board approval and licensee responsibility.

(a) The Board may refuse the involvement of a person providing management services. The Board's refusal may be based upon the following:

(1) The creation by the management contract of a pecuniary interest in the license.

(2) Facts upon which the Board could refuse a person's involvement in the license.

(b) The licensee's use of a management company will not affect the licensee's responsibility for violations of the Liquor Code or this title.

CHAPTER 5. DUTIES AND RIGHTS OF LICENSEES

Subchapter B. [EMPLOYES] EMPLOYEES OF LICENSEES

EMPLOYMENT OF OTHERS

§ 5.23. Appointment of managers.

* * * * *

(i) If approved by the Board, management contracts may permit the manager for the licensed premises to be employed by the management company; however, a licensee shall have unfettered discretion in all aspects of management of the licensed business, including the employment of the manager and sales of food, alcoholic and nonalcoholic beverages. A licensee's discretion includes control of the manager's hiring, firing, discipline, salary and duties. The manager is an agent of the licensee.

Subchapter D. SANITARY CONDITIONS, LIGHTING AND CLEANING OF [COILS] MALT OR BREWED BEVERAGE DISPENSING SYSTEMS

CLEANING OF [COILS] MALT OR BREWED BEVERAGE DISPENSING SYSTEMS

§ 5.51. Cleaning of [coils, tap rods and connections] malt or brewed beverage dispensing systems.

(a) [Coils, tap rods and connections, used in drawing malt or brewed beverages in licensed establishments, shall be thoroughly cleaned at least once every 7 days at the sole expense of the licensee dispensing the beverages on draft. The cleaning of coils, tap rods and connections by one licensee for another licensee is prohibited.] A licensee that uses a malt or brewed beverage dispensing system in its licensed premises shall clean the system at its sole expense. One licensee may not clean a malt or brewed beverage dispensing system for another licensee.

(b) [The following methods of cleaning coils, tap rods and connections have been approved by the Board:

(1) Live steam.

(2) Hot water and soda solution, followed by thorough rinsing with hot water.

(3) Another method which thoroughly cleans the coils, tap rods and connections, and leaves them in a sanitary condition.]

The method of cleaning must leave the entire malt or brewed beverage dispensing system in a clean and sanitary condition. The cleaning method used must include cleaning the entire system with a chemical cleaning solution or other cleaning method approved by the Board. The following alternative cleaning methods have Board approval:

(1) Live steam.

(2) Hot water and soda solution, followed by thorough rinsing with hot water.

(c) The frequency of cleaning for the malt or brewed beverage dispensing system shall be as follows:

(1) Once every 7 days for the valves, joints, faucets, couplers, hose fittings, washers, o-rings, empty beer detectors (known as "FOBs") and draft foam control units.

(2) Once every 7 days for the dispensing lines, except if the licensee has an operating ultrasonic, electromagnetic or other system that retards the growth of yeast and bacteria in the dispensing the lines. If such a system is installed and operating, licensee shall follow the cleaning frequency and cleaning method guidelines of the system's manufacturer.

(3) The Board may approve different cleaning frequencies.

§ 5.52. Certificate or record required.

(a) **[Coils, tap rods and connections]** The malt or brewed beverage dispensing system may be cleaned for the licensee by a person, other than another licensee, thoroughly equipped to do so by a method enumerated in § 5.51 (relating to cleaning of **[coils, tap rods and connections]** malt or brewed beverage dispensing systems). The licensee **[should]** shall obtain from the cleaner a certificate showing the date cleaned, the name of the person by whom cleaned and the method utilized. The certificate shall be kept on file **at the licensed premises** at all times for inspection by the Board.

(b) **[Coils, tap rods and connections]** The malt or brewed beverage dispensing system may be cleaned by the licensee **[himself by a method enumerated in § 5.51]**. The licensee shall maintain and keep a record of the date of each cleaning and the method utilized. This record shall also be kept on file at all times for inspection by the Board.

§ 5.53. Pressure maintenance.

[Where an airline pump is used for pressure, the intake shall be from outside the building and an air filter or satisfactory air cleansing device shall be provided. The use of carbon dioxide is recommended in lieu of air, as this is conducive to the maintenance of normal flavor in that it is much less susceptible than air to the growth of organisms and chemical changes which may impair flavor.] If a compressed gas or other pressurizing system is used in the malt or brewed beverage dispensing system, it shall be designed to preserve the normal flavor of the malt or brewed beverage and not introduce contaminants into the system.

§ 5.54. Responsibility for condition of equipment.

The licensee has the sole responsibility of maintaining equipment used in dispensing malt or brewed beverages on draft in a clean and sanitary condition. The mere fact that records of licensees **[indicating]** indicate that **[coils, tap rods and connections have]** the malt or brewed beverage dispensing system has been cleaned **[are]** is no defense to **[disciplinary]** enforcement action under the law and the provisions of this subchapter if the **[coils, tap rods or connections are]** malt or brewed beverage dispensing system is at any time found to be in an **[insanitary]** unsanitary condition.

CHAPTER 7. TRANSFER, EXTENSION, SURRENDER [AND], EXCHANGE AND SUSPENSION OF LICENSES

Subchapter A. TRANSFER OF LICENSES

§ 7.2. Transfers of ownership.

[Where] When an application is filed for transfer of a license from one person to another **[at the same address]**, a bill of sale of the business or fixtures shall be executed by the licensee and shall be exhibited to the Board or its representative. The purchase price of the business, either in the form of cash or legal obligation as security for the purchase price, shall be placed in escrow with an attorney or financial institution, to be paid to the original licensee upon the approval of the transfer by the Board. The actual transfer of ownership of the business may not pass until approval of the transfer of license has been given. The transferee shall exhibit a deed or lease for the premises, or bill of sale, or both, as the case may be. The license may not change hands until the license transfer has been approved by the Board and the original licensee may continue the operation of the business and may sell liquor or malt or brewed beverages until formal approval of the transfer is given. If the original licensee does not continue operation of the business under the license, **[no]** liquor or malt or brewed beverages may **not** be sold and the license shall be surrendered to the Board until the transfer is approved.

CHAPTER 11. PURCHASES AND SALES

Subchapter F. SALE OF LIQUOR TO THE BOARD

§ 11.143. Merchant tax responsibility.

(a) A merchant not already licensed by the Board shall provide to the Board, upon forms approved by the Departments of Revenue and Labor and Industry, the following:

- (1) The merchant's Personal Income Tax identification number.
- (2) The merchant's Sales Tax number.
- (3) The merchant's Corporation Tax number.
- (4) The merchant's employer Withholding Tax number.
- (5) The merchant's Unemployment Compensation account number.

(b) A merchant, at the time of annual renewal and issuance of its license or permit shall, by the filing of an application, waive any confidentiality with respect to tax information regarding the merchant in the possession of the Department of Revenue, the Office of Attorney General or the Department of Labor and Industry, regardless of the source of that information and shall consent to the providing of that information to the Board by the Department of Revenue, the Office of Attorney General or the Department of Labor and Industry.

(c) Upon receipt of an application for the grant, renewal or validation of a merchant's license or permit, the Board will review the tax status of the applicant. The Board will request tax information regarding the applicant from the Department of Revenue, the Office of Attorney General and the Department of Labor and Industry and the information will be provided.

(d) The Board will not approve an application for the grant, renewal or validation of a merchant's

license or permit issued under this section when the applicant has failed to do one or more of the following:

- (1) Provide any of the information required under subsection (a).
- (2) File required tax reports.
- (3) Pay taxes not subject to a timely administrative or judicial appeal or subject to an authorized deferred payment plan.

(e) Upon the required submission of the annual fee or upon renewal, validation or issuance of a merchant's license or permit, if the Department of Revenue or the Department of Labor and Industry notifies the Board of noncompliance with the provisions in this section, the Board will not renew, issue or validate the merchant's license or permit. An appeal of the Board's action will not act as a supersedeas.

CHAPTER 13. PROMOTION

Subchapter A. ADVERTISING

ADVERTISING OF BRAND NAMES

§ 13.43. Interior display.

(a) A licensee may [not] install or permit to be installed electrically operated signs or devices, lithographs, framed pictures, cardboard displays, statuettes, plaques, placards, streamers or similar items advertising brand names and intended for interior display on the licensed premises.

* * * * *

GIVING AND ACCEPTING THINGS OF VALUE

§ 13.51. General prohibition.

(a) Except as provided in [subsections (b), (c)] this section and in § 13.52 (relating to advertising novelties), [no] an in-State or out-of-State manufacturer, licensee or group of licensees, their servants, agents or [employees] employees, may not directly or indirectly, in person, individually or through a trade organization, contribute to or accept from another licensee or group of licensees of a different class, their servants, agents or [employees] employees or a trade organization of licensees of a different class, anything of value by means of advertisements, contributions, purchase, sale of tickets, donations or by any device, for any purpose.

* * * * *

(e) The sponsorship of a tasting upon a licensed premises will not be considered giving or accepting a thing of value.

Subchapter D. TASTING EVENTS

GENERAL PROVISIONS

§ 13.201. Definitions.

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

* * * * *

Sponsor—A sponsor of a tasting event may be any licensed [broker, holder of a limited winery or winery license, or a manufacturer of liquor] ven-

dor, importer, distributor, importing distributor or manufacturer or its agent or employee who is 21 years of age or older.

Standard size alcoholic beverage—A standard size alcoholic beverage is 12 fluid ounces of a malt or brewed beverage, 4 fluid ounces of wine (including fortified wine) or 1 1/2 fluid ounces of [liquor] spirits.

* * * * *

TASTING EVENTS

§ 13.211. Tasting events.

(a) Tastings may be conducted by [licensed brokers, distributors, importing distributors and manufacturers or their agents] sponsors upon licensed or unlicensed premises.

(b) [Licensed brokers, distributors, importing distributors and manufacturers or their agents] Sponsors conducting a tasting event shall adhere to the following requirements:

* * * * *

(3) [No more than one standard size alcoholic beverage of each product shall be provided to each tasting participant.] Products offered may not exceed a standard size alcoholic beverage for that product. For example, if wine is offered, each glass of each wine offered to a participant may not exceed 4 ounces in volume. A tasting event comparing a brand of Chardonnay from California to a brand of Chardonnay from France would allow the participant to receive one 4-ounce glass of each Chardonnay.

IN-STORE TASTING EVENTS

§ 13.223. Procurement of wine or spirits, or both.

(a) Wine or spirits used during the in-store tasting events [must] shall be procured by the sponsor in accordance with the sampling process as specified in § 13.81 (relating to samples of liquor) [or], by [legal] purchase from the Board or the sponsor may provide and transport the wine and spirits from its own stock.

* * * * *

§ 13.228. Disposal and storage of [unused alcohol] partially-used liquor and empty containers.

(a) At the conclusion of the in-store tasting event, sponsors shall either discard unused portions of opened liquor containers at the State Liquor Store or may reseal the partially-consumed liquor containers. The resealed partially-used containers shall be placed in storage at the store for use at a subsequent store tasting or may be removed from the premises. Partially-consumed liquor containers may not be placed in storage at a store for more than 15 days. After 15 days, partially-used containers of liquor may be discarded by the Board.

* * * * *

(c) [Unused product, bottles or] Resealed partially-used containers may not be furnished to employees of the Board or other persons and may only be used for a subsequent in-store tasting.

CHAPTER 17. SPECIAL RULES OF PRACTICE AND PROCEDURE FOR MATTERS BEFORE THE BOARD

Subchapter A. GENERAL

§ 17.5. Subpoenas.

(a) *Issuance.* [**Issuance**] Except for subpoenas issued upon the Board's own motion, issuance of subpoenas [**shall**] will be as follows:

* * * * *

§ 17.7. Exhibits.

* * * * *

(b) **Documents that the Board, a party, petitioner or intervenor expects to offer as exhibits may be presented to the Board's hearing examiner and all other parties of record in advance of a hearing. These documents are not evidence unless admitted into the record by the hearing examiner at the hearing. Presentation of documents to the other parties before a hearing is encouraged.**

(c) Subsection (a) supersedes 1 Pa. Code § 33.15 (relating to number of copies).

Subchapter B. LICENSE APPLICATIONS

§ 17.13. Protests/intervention procedure.

* * * * *

(b) *Time.* A **protest or** petition to intervene shall be filed with the Board within 30 days of the posting of notice of application as required by Chapter 3 Subchapter B (relating to notice posting). The Board may accept an untimely filed protest or petition to intervene, but only upon good cause shown.

* * * * *

[Pa.B. Doc. No. 07-1279. Filed for public inspection July 20, 2007, 9:00 a.m.]

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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

Formalization and Clarification of Current Practices

The Public School Employees' Retirement Board (Board) proposes to amend its Chapters 201, 211, 213 and 215 to read as set forth in Annex A.

Statutory Authority

This rulemaking is proposed under 24 Pa.C.S. § 8502(h) (relating to administrative duties of board).

Purpose

The primary purpose of this proposed rulemaking is to formalize and clarify current practices, remedy problems that have arisen and reflect issues unique to the Public School Employees' Retirement System (PSERS). A definition is deleted if it merely repeats the definition in 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code) (Retirement Code). Outdated regulations were deleted and new regulations were added to

provide a clear, concise understanding of the Board's policies and procedures in accordance with the Retirement Code. In addition, editorial amendments have been made for improved readability.

Summary of Amendments

Chapter 201. Applicability of General Rules

Amendments to § 201.1 (relating to applicability of general rules) were made for the purpose of addressing grammatical errors and clarity.

Sections 201.2—201.5 are proposed to be rescinded.

Proposed § 201.2a (relating to definitions) contains terms used only in the hearing and appeal process. The definition section of the Retirement Code does not provide a definition of the terms used in the hearing and appeal process. The definitions were added in the beginning of this chapter to provide clarification and understanding of the terms regarding the hearing and appeal process. The distinction between a matter before the Executive Staff Review Committee (ESRC) and a matter appealed to the Board is made through the use of the terms "adjudicatory benefit appeal" and "nonadjudicatory benefit appeal."

Proposed § 201.3a (relating to nonadjudicatory benefit appeal) sets out the procedure before the ESRC for a nonadjudicatory benefit appeal.

Proposed § 201.4a (relating to adjudicatory benefit appeal and request for administrative hearing) clarifies the procedure required of a claimant to file an adjudicatory benefit appeal within the prescribed time.

Proposed § 201.5 (relating to authorization of Secretary of the Board) was taken from an existing Board resolution and added to clarify the Secretary's powers and duties regarding the appeal process in approving uncontested orders.

Proposed § 201.6 (relating to motions practice) provides for the Board to rule directly on a preliminary objection or summary judgment or to delegate the recommendation to the hearing examiner. This section provides more flexibility and clarity in the motions process.

Proposed § 201.7 (relating to service and return of subpoenas) conforms the method of service of subpoenas to the Pennsylvania Rules of Civil Procedure. See 231 Pa. Code.

Proposed § 201.8 (relating to dismissal for nonappearance) was moved from § 201.4 for organizational purposes.

Proposed § 201.9 (relating to introduction of documents from the System's records) clarifies the method of authenticating PSERS' documents to be admitted as evidence in an adjudicatory benefit appeal hearing.

Proposed § 201.10 (relating to briefs) clarifies the process of filing briefs after a hearing. Section (a) supplements 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) in requiring that the claimant shall file the first brief.

Proposed § 201.11 (relating to proposed opinion and recommendation) clarifies the requirements of the hearing examiner's proposed opinion.

Proposed § 201.12 (relating to oral argument before the Board) was added to clarify the process of requesting oral argument before the Board and the procedure to be followed when presenting oral argument. It is adopted from an existing Board resolution.

Chapter 211. Preliminary Provisions

Section 211.1(a) (relating to short title of part) is amended to clarify the chapters to which the definitions are applied.

Section 211.2 (relating to definitions) is amended to delete definitions that repeat the Retirement Code definitions or that are outdated. Some existing definitions are amended to correct grammatical errors. Some definitions are amended to conform to Internal Revenue Code. Some definitions are added or amended for clarification.

Proposed § 211.3 (relating to construction) is moved from § 213.35 (relating to general regulations) for organizational purposes. Section 213.35 is rescinded in this proposed rulemaking.

Chapter 213. Contributions and Benefits

Section 213.1(a) (relating to mandatory and optional membership) is amended to correct grammatical errors. Subsection (b) was moved from § 215.36 (relating to optional alternate retirement programs) for organizational purposes. Section 215.36 is rescinded in this proposed rulemaking.

Sections 213.2 and 213.3 (relating to credited school service; and eligibility points for retention and reinstatement of service credits) are amended to correct grammatical errors and for clarification.

Proposed § 213.3a (relating to waiver of adjustments) reflects the Board's policies in interpreting 24 Pa.C.S. § 8303.1 (relating to waiver of adjustments) regarding adjustments to a member's account that would cause an undue hardship for the member.

Amendments to § 213.4 (relating to creditable nonschool service) correct grammatical errors and the deletion of outdated provisions.

Section 213.5 (relating to classes of service) is proposed to be rescinded because it is outdated.

Section 213.6 (relating to eligibility points) is amended to correct grammatical errors.

Section 213.9 (relating to eligibility for death benefits) is amended to comply with the wording of 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors).

Section 213.23 (relating to member contributions for creditable school service) is proposed to be rescinded because it is outdated and does not supplement 24 Pa.C.S. § 8323 (relating to member contributions for creditable school service).

Section 213.24 (relating to contributions for the purchase of credit for creditable school and nonschool service) is amended to correct grammatical errors and clarification. Subsection (b) is amended to clarify the requirements of 24 Pa.C.S. § 8324(b) (relating to contributions for purchase of credit for creditable nonschool service) to receive credit for nonintervening military service. The section was also amended to reflect changes in legislation to include service as a Class T-D member.

The amendments to § 213.25 (relating to incomplete payments) clarify that a member's estate may not complete payments of purchasable service but that the annuity benefit will be reduced by the debt, provided that the reduction does not negatively impact the present value.

Section 213.27 (relating to payments by employers) is amended to correct grammatical errors and for clarity. Subsection (a) reduces the time for an employer to file monthly reports from 15 days to 10 days following the

end of the month. An amendment has also been made to reduce the time to 5 business days that the employer has to pay the bill issued by the Board.

Section 213.30 (relating to appropriations by the Commonwealth) is amended to correct grammatical errors.

Section 213.41 (relating to return of accumulated deductions) is amended to clarify that the member must also qualify for membership into PSERS upon return to service.

Section 213.44 (relating to disability annuities) is amended to be consistent with amendments to the pertinent sections of the Retirement Code.

Section 213.45 (relating to change in benefit payment plan) is amended to correct grammatical errors and to provide consistency with the Retirement Code. Subsection (h)(1) provides that an annuitant has 30 days following certification of the amount due to return money received by PSERS or elect an actuarial reduction to the annuitant's account, in default of which, an actuarial reduction shall be applied.

Section 213.46 (relating to termination of annuities) is amended to reflect changes in the Retirement Code.

Sections 213.47 and 213.49 (relating to death benefits; and payment of benefits) are amended to correct grammatical errors and for clarification.

Chapter 215. General Administration

Section 215.2(a) (relating to administrative duties of the Board) is deleted because it is inconsistent with act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.9), known as the Right-to-Know Law, which controls the subject matter.

Section 215.5 (relating to duties of the Board) is amended for clarification and correction of grammatical errors. This section is also generally amended for consistency with the Retirement Code to clarify that the effective date of a member's disability will be the day after the last day of compensation. Subsections (a)(5) and (b) were amended for purposes of clarity.

Section 215.6 and 215.7 (relating to duties of employers; and rights and duties of school employes and members) are amended to correct grammatical errors. Amendments and deletions were also made to be consistent with changes made to the Retirement Code. Section 215.7(d) is also amended to clarify that a nomination of beneficiary must be in writing but is not required to be on a form issued by the Board.

Section 215.33 (relating to taxation, attachment and assignment of funds) is amended because it is outdated.

Fiscal Impact

The proposed rulemaking is not expected to have significant negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 6, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Education Committee and the Senate Finance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objec-

tions to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Effective Date

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

Contact Person

For further information, contact Frank Ryder, Director of Government Relations, Public School Employees' Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17108, (717) 720-4733; or Charles K. Serine, Deputy Chief Counsel, Public School Employees' Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17108, (717) 720-4679.

Public Comments

Written comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Public School Employees' Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17108-0125. Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by August 20, 2007. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must be received by August 10, 2007. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments. Comments may also be submitted electronically to the Board at fryder@state.pa.us and must also be received by the Board by August 20, 2007. 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 transmitted by mail to ensure receipt.

JEFFREY B. CLAY,
Secretary

Fiscal Note: 43-10. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

**PART XIII. PUBLIC SCHOOL [EMPLOYES']
EMPLOYEES' RETIREMENT BOARD**

**CHAPTER 201. [APPLICABILITY OF GENERAL
RULES] PRACTICE AND PROCEDURE**

§ 201.1. 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), [are] is applicable to the activities of and proceedings before the Board, except as provided in, or inconsistent with, this chapter.

§ 201.2. [Expedited disposition process] (Reserved).

[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.]

§ 201.2a. Definitions.

(a) In addition to the definitions in 1 Pa. Code § 31.3 (relating to definitions under the General Rules of Administrative Practice and Procedure), as used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

Adjudicatory benefit appeal—An appeal from the ESRC to the Board in which a formal hearing is requested and in which an adjudication of the Board is issued under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

Board—The Public School Employees' Retirement Board.

Claimant—An individual who, or entity that, has requested an adjudicatory benefit appeal.

Executive Director—The appointed executive director of the System. The Executive Director of the System is also the Secretary of the Board.

ESRC—The Executive Staff Review Committee, which consists of the Executive Director and additional senior staff members as appointed by the Executive Director.

Hearing examiner—A presiding officer appointed to hear an adjudicatory benefit appeal in accordance with 1 Pa. Code § 35.185 (relating to designation of presiding officers).

Nonadjudicatory benefit appeal—An appeal to the ESRC, which is resolved without conducting a hearing or issuing an adjudication. The action of the ESRC will be deemed final unless a claimant files a timely adjudicatory benefit appeal from that action and seeks an administrative hearing.

Party—An individual or entity participating in an adjudicatory benefit appeal, including an intervenor and any person or entity joined to the appeal.

Retirement Code—The Public School Employees' Retirement Code (24 Pa.C.S. §§ 8101—8535).

Secretary of the Board—The appointed Secretary of the Board as provided in the Retirement Code. The Secretary of the Board is also the Executive Director of the System.

Subordinate officer—

(i) An officer or employee of the System.

(ii) The term does not include the Executive Director, Secretary of the Board or the Board.

System—The Public School Employees' Retirement System.

(b) The provisions of this section supplement 1 Pa. Code § 31.3 (relating to definitions); the definition of "subordinate officer" supersedes the definition in 1 Pa. Code § 31.3.

§ 201.3. [Motions practice] (Reserved).

[(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.* 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.]

§ 201.3a. Nonadjudicatory benefit appeal.

(a) Benefit appeals from actions of subordinate officers of the System shall be made to the ESRC and shall be nonadjudicatory.

(b) A letter from the System taking an action or making a determination on behalf of the System shall constitute action of a subordinate officer. A letter shall constitute action of a subordinate officer whether or not the letter states that an appeal must be taken within 30 days.

(c) An appeal to the ESRC shall be received by the System within 30 days after the date of the letter from the System taking an action or making a determination on behalf of the System. If a claimant fails to appeal an action or determination by a subordinate officer to the ESRC within the prescribed time, the action of the subordinate officer will become final.

(d) An appeal to the ESRC must be made in writing and addressed to:

Executive Staff Review Committee
Public School Employees'
Retirement System
P. O. Box 125
Harrisburg, Pennsylvania 17108-0125

(e) The ESRC will meet as necessary to review and decide nonadjudicatory benefit appeals. If the appeal is granted, the claimant will be notified and the matter will be closed. If the appeal is denied, in full or in part, the claimant shall have the right to appeal the denial to the Board. The ESRC will send the claimant a denial letter explaining why the appeal is denied, and advise the claimant of the right to appeal to the Board and request an adjudicatory benefit appeal and administrative hearing within 30 days after the date of the denial letter.

(f) The Executive Director or a designee will maintain a record of the decisions of the ESRC and report to the Board the results of each decision by the ESRC, which will include a brief summary of the issues involved.

(g) This section supersedes 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

§ 201.4. [Dismissal for nonappearance] (Reserved).

[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.]

§ 201.4a. Adjudicatory benefit appeal and request for administrative hearing.

(a) An adjudicatory benefit appeal and request for administrative hearing from a denial letter from the ESRC must be in writing and received by the Board within 30 days after the date of the ESRC denial letter.

(b) An adjudicatory benefit appeal and request for administrative hearing must be addressed to:
Appeal Docket Administrator
Public School Employees' Retirement Board
P. O. Box 125
Harrisburg, PA 17108-0125

(c) If a claimant fails to appeal a decision of the ESRC to the Board within the prescribed time, the decision of the ESRC is deemed final.

(d) Appeals to the Board from the ESRC as to which no motions are filed under § 201.6 (relating to motions practice) will be referred to a hearing examiner under 1 Pa. Code Chapter 35, Subchapter E (relating to presiding officers) to conduct a hearing and prepare a recommended decision to the Board under 1 Pa. Code §§ 35.202 and 35.205 (relating to proceedings in which proposed reports are prepared; and contents of proposed reports).

§ 201.5. [Letter briefs] (Reserved).

[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 context and form of briefs), but the letter briefs may not be more than 3 pages in length.]

§ 201.5a. Authorization of Secretary of the Board.

The Secretary of the Board will be authorized to execute and issue routine and uncontested orders on behalf of the Board, including, but not limited to, the following:

(1) An order to dismiss when a claimant has withdrawn a request for an adjudication.

(2) An order granting an extension of time to file a document.

(3) An order granting the right of a third party to intervene in a pending appeal.

§ 201.6. Motions practice.

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

(b) *Summary judgment.* The System or the claimant may file a motion for summary judgment directly with the Board. The motion must conform to Pa.R.C.P. Nos. 1035.1—1035.5.

(c) The Board will rule directly on preliminary objections or motions for summary judgment unless, by order, it delegates the matter to a hearing examiner to prepare a proposed opinion and recommendation under § 201.12 (relating to oral argument before the Board).

(d) This section supersedes 1 Pa. Code § 35.54 (relating to motions as to complaint).

§ 201.7. Service and return of subpoenas.

(a) Service of subpoenas will be made by any of the methods authorized by Pa.R.C.P. No. 234.2(b) (relating to Subpoena. Issuance. Service. Compliance. Fees. Prisoners.). It will not be necessary that witness fees be tendered at the time of service of the subpoena, but the party on whose behalf the subpoena is issued shall furnish the fees promptly upon the written request of the witness after service of the subpoena.

(b) This section supersedes 1 Pa. Code § 35.142(b) (relating to service and return of subpoenas) and supplements 1 Pa. Code §§ 35.139 and 35.142(c) (relating to fees of witnesses; and subpoenas).

§ 201.8. Dismissal for nonappearance.

(a) 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.

(b) This section supplements 1 Pa. Code §§ 35.125, 35.187 and 35.205 (relating to order of procedure; authority delegated to presiding officers; and contents of proposed reports).

§ 201.9. Introduction of documents from the System's records.

(a) Documents from the System's records need not be certified or authenticated under 42 Pa.C.S. §§ 6103 and 6104(a) (relating to proof of official records; and effect of official records generally) to be admitted into evidence in an administrative hearing.

(b) Any subordinate officer who has access to the System's records, and has knowledge regarding the identity and mode of preparation of the records prepared by the System and the filing with, and maintenance of records by the System in the regular course of the System's business will be qualified to identify any documents or other records on file with the System in any hearing and to testify regarding the documents or other records.

(c) This section supplements 1 Pa. Code §§ 35.161 and 35.164 (relating to form and admissibility of evidence; and documents on file with agency).

§ 201.10. Briefs.

(a) After the close of the testimony, the hearing examiner will fix a briefing schedule. Unless otherwise agreed to by all parties and the hearing examiner, the claimant, or other party upon whom rests the burden of proof, shall file the first brief, followed by the brief of the System and a reply brief by the claimant or other party who filed the first brief. Briefs must conform to 1 Pa. Code § 35.192 (relating to content and form of briefs). A party upon whom rests the burden of proof may not be denied the right to file a reply brief. Any party may waive the right to file a brief or reply brief, either on the record, or in writing to the hearing examiner, in either of which events, the hearing examiner will note that fact on the record, deduct the time allotted for the filing of the brief or briefs from the briefing schedule and prepare an opinion and recommendation for the Board without the benefit of a brief on behalf of the party who elected to waive the filing of a brief.

(b) 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.

(c) This section supplements 1 Pa. Code §§ 35.191 and 35.192.

§ 201.11. Proposed opinion and recommendation.

(a) Unless otherwise ordered by the Board, the hearing examiner will file a proposed opinion and recommendation to the Board in cases when an administrative hearing has been held before a hearing examiner. The contents of the proposed opinion and recommendation will be in accordance with 1 Pa. Code § 35.205 (relating to contents of proposed reports) and will also include a discussion of the matter. The proposed opinion and recommendation will not become the opinion and order of the Board unless it is adopted by the Board.

(b) The proposed opinion and recommendation shall be filed with the System, together with the transcript of testimony, exhibits and briefs, all of which shall become part of the record. At the same time the proposed opinion and recommendation is filed with the System, the hearing examiner will serve copies upon all parties and staff counsel.

(c) The Board may adopt or reject, in whole or in part, or supplement the proposed opinion and recommendation or issue its own opinion and order, whether or not exceptions to the proposed opinion and recommendation are filed by any party. When exceptions are filed, the Board will rule on the exceptions.

(d) This section supplements 1 Pa. Code §§ 35.202 and 35.207 (relating to proceedings in which proposed reports are prepared; and service of proposed reports).

§ 201.12. Oral argument before the Board.

(a) The right to oral argument will be discretionary with the Board. When oral argument is granted, the Secretary of the Board will schedule the argument for the next available Board meeting.

(b) If a party filing exceptions to a recommendation of the hearing examiner wishes oral argument before the Board, the party shall file the request for oral argument with the exceptions.

(c) If a party seeks oral argument in a case in which exceptions have been filed by the System to a recommendation of the hearing examiner that is in favor of a claimant, the request for oral argument shall be filed with or before the party's response to the System's exceptions. In that case, the Secretary of the Board will grant oral argument and schedule it for the next available Board meeting.

(d) Oral argument will be limited to a maximum of 10 minutes for each party, unless otherwise directed by the Board. The claimant, as the party with the burden of proof, shall argue first. If there are more than two parties to the appeal, the Secretary of the Board will establish the order of argu-

ment consistent with who has the burden of proof. New evidence will not be accepted at the oral argument.

(e) At the conclusion of the oral argument, the Board will discuss and decide the case. The Board may table the case for further consideration at its next meeting. The Board may also elect to discuss all or part of the case in executive session in accordance with 65 Pa.C.S. Chapter 7 (relating to the Sunshine Act).

(f) The Board's counsel will draft a proposed adjudication in accordance with the Board's decision. The proposed adjudication will be presented for the Board's approval at the Board meeting next following the Board's determination of the case, unless the Board agrees to have the proposed adjudication issued without further review by the Board.

(g) This section supersedes 1 Pa. Code § 35.214 (relating to oral argument on exceptions).

CHAPTER 211. PRELIMINARY PROVISIONS

§ 211.1. Short title of part.

(a) [This part is] Chapters 211, 213 and 215 (relating to preliminary provisions; contributions and benefits; and general administration) are promulgated under the Retirement Code.

* * * * *

§ 211.2. Definitions.

(a) The definitions in section 8102 of the Retirement Code (relating to definitions) are applicable to Chapters 211, 213 and 215 (relating to preliminary provisions; contributions and benefits; and general administration) as clarified or supplemented by the definitions in subsection (b).

(b) The following words and terms, when used in this part, have, consistent with the Retirement 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 account of previous school service, current school service, or creditable nonschool service, as well as the statutory interest credited on all contributions.]

Active member—

(i) A school [**employee**] employee for whom pickup contributions are properly being made to the Fund, including those granted a sabbatical leave of absence, or who are on an approved leave of absence for professional study, as an exchange teacher, or service with a collective bargaining organization, under sections 8102 and 8302 (relating to definitions; and credited school service) of the Retirement Code, or for whom the contributions otherwise required for current school service are not being made solely by reason of any provision in the Retirement Code relating to the limitations under sections 401(a)(17) or 415(b) of the Internal Revenue Code.

(ii) [**It shall exclude employees**] The term excludes employees who are on leave of absence without pay.

Actuarially equivalent—[**Equal**] Two benefits are said to be actuarially equivalent if they have equal present values, computed on the basis of statutory interest and the mortality tables currently adopted and used by the Board.

* * * * *

[*Basic contribution rate*—A rate of 6.25% on all compensation received by the member during school employment.]

Beneficiary—The person, estate, trust, or licensed charitable organization or entity last designated by a member in writing to the Board [**on forms supplied by the Board**] to receive accumulated deductions or a lump sum benefit upon the member's death.

Board—The Public School [**Employees'**] Employees' Retirement Board [**required by the Retirement Code to administer the System**].

Certified members—For purposes of voting to fill a seat on the Board, the term includes members whose position requires certification by the Department of Education under section 1101 of the Public School Code of 1949 (24 P. S. § 11-1101). All other members are noncertified members.

[*Compensation*—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 school service not based on the standard salary schedule for which the employe is rendering service. The term excludes 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 pickup contributions are made for an active member, or in the case of an inactive member, the date of resignation or the date the employer formally discontinues 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 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 or the date specified on the application, whichever is later, and, in the case of a disability benefit, the date certified by the Board as the effective date of disability.]

Employer—

(i) A governmental entity directly responsible for the employment and payment of the school [**employee**] employee and charged with the responsibility of providing public education within this Commonwealth.

(ii) The term includes all governmental entities whose [**employees**] **employees** under prior law and regulations are members of the System as of the effective date of the Retirement Code.

Final average salary—**The highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months.** In the case of a part-time [**employee**] **employee**, compensation shall be annualized by multiplying 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 as a school [**employee**] **employee** or a State [**employee**] **employee**, or both. **In the case of a member who first became a member on or after July 1, 1996, compensation shall be subject to the application of section 8325.1 of the Retirement Code (relating to annual compensation limit under IRC § 401(a)(17)). Final average salary is an average of the 3 highest school years. For terminations before the end of the school year, salary for that part of the year may be used in combination with a proportionate percentage of a prior year. School years with part-time service may be annualized for salary calculation. Either annualized or actual retirement-covered compensation is allocated to months for each school year. For final average salary purposes, retirement-covered compensation is credited in the school year in which it is earned, not paid. Retirement-covered compensation is not recognized for any period of creditable nonschool service purchased by a member.**

[*Full coverage member*—A dual coverage or a single coverage member excluding joint coverage member.]

Full-day session—That period of time determined by the [**school district**] **employer**, without objection from the Department of Education, during which a school [**employee**] **employee** is employed daily for instructional purposes.

Full time [**employee**] **employee**—An [**employee**] **employee** employed [**no less than**] **at least 5 hours per day or 25 hours per week or its equivalent.**

* * * * *

Governmental entity—In addition to those enumerated in the Retirement Code, **the term** includes any agency or authority, being a corporate body or body politic created by law, **or any entity created by those agencies or authorities**, charged with the responsibility of providing public education within this Commonwealth.

* * * * *

Inactive member—

(i) 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**], **except in the case of an active member for whom the contributions otherwise required for current school service are not being made solely by reason of any provision in the**

Retirement Code relating to the limitations under sections 401(a)(17) of the Internal Revenue Code, who has accumulated deductions standing to his credit in the Fund and for whom contributions have been made within the last 2 school years or a multiple service member who is active in the State Employees' Retirement System.

(ii) The term also includes a member who is on furlough and has elected to leave the accumulated deductions in the Fund at statutory interest during the furlough period, which period may not exceed 2 school years; or a member who is on leave of absence without pay.

* * * * *

[*Intervening military service*—Active military service of a member who was a school employee immediately preceding the member's induction into the armed services or forces of the United States to meet a draft obligation excluding any voluntary extension of the obligational service and who becomes a school employe within 90 days of the expiration of the service.]

* * * * *

Nonprofessional members—The term includes all school [**employees**] **employees** who are not "professional [**members**] **employees,**" as defined in section 1101 of the Public School Code of 1949, and who also qualify for membership in the System under section 8301 of the Retirement Code (relating to mandatory and optional membership). **See also definition of "certified members" for the meaning of "noncertified members."**

[*Pickup contributions*—Regular or joint coverage member contributions which are made by the employer for active members for current service on or after January 1, 1983.]

Professional members—[**As**] **"Professional employees,"** as defined in section 1101 of the Public School Code of 1949 [**(24 P. S. § 11-1101)**], including all temporary professional [**employees**] **employees**, professional [**employees**] **employees**, substitutes and commissioned officers currently employed by a school district or intermediate unit and qualifying for membership in the System under section 8301 of the Retirement Code **(relating to mandatory and optional membership).** **See also definition of "certified members."**

* * * * *

Retirement Code—The Public School [**Employees'**] **Employees' Retirement Code**[,] (24 Pa.C.S. §§ 8101—[**8534**] **8535).**

* * * * *

School [**employee**] **employee**—

(i) 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 [**employee**] **employee** excluding, however, any independent contractor or a person compensated on a fee basis.

(ii) The term does not include a person who is rendering services to the school district on a commission or fee basis, whether an elected official or not.

School year—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 1 year. **For the purpose of the Retirement Code, the school year commences on July 1 and ends on June 30 of the following year.**

* * * * *

[Superannuation or normal retirement age—

<i>Class of service</i>	<i>Age</i>
T-A	62 or any age upon accrual of 35 eligibility points
T-B	62
T-C	62 or age 60 provided the member has at least 30 eligibility points or any age upon accrual of 35 eligibility points

***System*—The Public School Employees' Retirement System.**

***Vestee*—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.]**

* * * * *

§ 211.3. Construction.

(a) Former annuitants who are active members of the System on October 2, 1975, are not subject to the recalculation of annuities of annuitants who return to school service thereafter.

(b) The rights of members of Class T-B, as provided in section 301(2)(c) and (d) of the Public School Employees' Retirement Code of 1959 (24 P. S. § 3301(2)(c) and (d) (repealed)) shall continue.

(c) The provisions relating to former teachers as provided in sections 303(3) and 407(1) of the Public School Employees' Retirement Code of 1959 (24 P. S. §§ 3303(3) and 3407(1) (repealed)), shall continue.

(d) As applicable to members terminating school service on or after March 1, 1974, the provisions relating to the purchase of credit for previous school or creditable nonschool service and the calculation of benefits shall be effective March 1, 1974.

(e) The provisions relating to the crediting of statutory interest to the accounts of members on leave without pay shall become effective on July 1, 1975.

(f) Part-time employee membership, as provided by the Retirement Code, shall become effective with the beginning of the school year 1975-76, subject to the limitations based upon qualification, as provided in this part.

(g) The provisions relating to eligibility for disability annuities, shall be effective, as applied to all active or inactive members, from December 1, 1974.

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

§ 213.1. Mandatory and optional membership.

(a) Membership shall be mandatory, as of the effective date of school employment, for all school [**employee**] **employees**, except the following categories:

(1) An officer or [**employee**] **employee**, who is a member of the State [**Employees'**] **Employees'** Retirement System under any of the categories enumerated under section 8301(a)(1) of the Retirement Code (**relating to mandatory and optional membership**); or an officer or [**employee**] **employee** who is a member of an employer approved retirement program as provided under [§ 215.36 (**relating to optional alternate retirement programs**)] subsection (b).

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

(3) [**Employees**] **Employees** in Federal programs shall conform with the following:

(i) A school [**employee**] **employee** who has joined the System and is employed by a governmental entity in a wholly or partly-funded Federal program, during the period December 22, 1965, and prior to July 1, 1975, may continue membership in the program for continuous service rendered after July 1, 1975, and until termination of service.

(ii) From and after July 1, 1975, an [**employee**] **employee** 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.

(b) Under section 8301(a)(1) of the Retirement Code, certain school employees may elect not to join the System in favor of an optional alternate retirement program approved by the employer.

(1) Every employee who is eligible for membership in the optional alternate retirement program shall make the election within 30 days of the first date of active employment. Employees not exercising the option to join the optional alternate retirement program shall be deemed to have chosen to commence active membership in the System, unless they have elected membership in the State Employees' Retirement System.

(2) When an eligible employee has elected to participate in the optional alternate retirement program in accordance with paragraph (2) of former § 215.36, as it existed on April 15, 2005, or paragraph (4) of former § 215.36, as it existed on April 15, 2005, or elects to participate in the optional alternate retirement program in accordance with paragraph (1), the election is final and binding so long as the employee remains eligible to remain in the optional alternate retirement program. When

an employee later is employed in a capacity which does not qualify for membership in the optional alternate retirement program, the employee shall, upon meeting the qualifications for membership in the system, either make contributions to the fund or reinstate the former credited service for which contributions had been withdrawn. Remittance of contributions or reinstatement of former credited service shall be made in accordance with the applicable provisions of the Retirement Code. Service, salary or other compensation paid to an employee while a member of the optional alternate retirement program will not be credited toward membership in, or retirement benefit from, this System.

(c) Retirement Code reference: Section 8301 of the Retirement Code [(relating to mandatory and optional membership)].

§ 213.2. Credited school service.

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

(1) A full-time salaried [employee] employee shall receive 1 year of credited service for each nonoverlapping period of 12 consecutive employable months for which the [employee] employee contributes for at least 180 full-day sessions of employment. A full-time salaried [employee] employee is not eligible to earn more than 1 year of credited service during 12 consecutive months although the [employee] employee 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 [employee] employee, that is, one who is compensated as a percentage of annual salary, shall receive credited service based on the proportion of full-time service for which the [employee] employee is employed during a school year.

(3) A per diem [employee] employee, having achieved eligibility by virtue of being employed for at least 80 full-day sessions during the fiscal year, shall receive a portion of credited service based on the relationship of actual full-day sessions worked as it relates to the 180 full-day session limitation.

(4) An hourly school [employee] employee, having achieved membership eligibility by virtue of being employed [no less than] at least 500 hours in a fiscal year, shall receive a proportion of credited service based on the actual hours worked as it relates to 1,100 hours.

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

(6) Notwithstanding the limitations [set forth] in paragraphs (1)–(5) [employees] employees who may be on strike will not be eligible for credited service during a strike period unless the days or hours lost by virtue of the strike are actually served and compensation paid.

(b) Approved leaves of absence. Credited service [shall] will be granted to an active member for an approved leave of absence as authorized under sections 8102 and 8302 of the Retirement Code (relating to

definitions; and credited school service). Members may be granted other types of leaves of absence, not authorized by the Retirement Code, but the leaves will not entitle the member to any credited service, during the period of the leave. Credited service for the approved leaves of absence [shall] will be granted under the following conditions only:

* * * * *

(2) Proper [current] contributions, based on the salary [as if] the member would have received had the member been in regular full-time employment with the employer during the period of the leave are made by the member and by the employer if required. An employer may not be permitted to suspend the requirement of making its required contributions during the period of the leave. [Current contributions] 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.

* * * * *

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

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(b) Every active member or multiple service member who is active in the State [Employees'] Employees' Retirement 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 the service as provided in this part. An active member or multiple service member seeking to reinstate previous service shall be required to purchase and pay for all the service previously credited. The member is not permitted to purchase only a portion of previously credited service to be reinstated.

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§ 213.3a. Waiver of adjustments.

(a) Undue hardship. To find that an adjustment made under section 8534(b) of the Retirement Code (relating to fraud and adjustment of errors) meets the undue hardship test under section 8303.1(a)(1) of the Retirement Code (relating to waiver of adjustments), the Board requires that either:

(1) The adjustment causes a reduction in excess of 5% of the monthly annuity or other relevant amount.

(2) The adjustment results in the member losing eligibility for a benefit other than an annuity.

(b) Retirement Code reference: Section 8303.1 of the Retirement Code.

§ 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'] Employees' Retirement System.

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(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.]

(i) Creditable nonschool service may also be purchased for previous service as an [employe] employee of a county board of school directors whose employment was terminated because of a transfer of the administration of the service or of the entire agency to another governmental unit. This service is not limited to or subject to the conditions of section 8304(c) of the Retirement Code (relating to creditable nonschool service), dealing with total permissible nonschool service credit.

(j) The total credit of nonschool service, identified in subsections (a)—(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, additional years of State service rendered the Commonwealth and credited in the State [Employees'] Employees' Retirement System. This limitation on total permissible nonschool service credit does not apply to the service provided in subsection (i).

* * * * *

§ 213.5. [Classes of service] (Reserved).

[(a) Members of Class T-B or T-A may, at any time prior to retirement, elect to convert the membership into Class T-C, provided 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 the member converts the membership to Class T-C and makes the appropriate contributions.

(b) Retirement Code reference: Section 8305 of the Retirement Code (relating to classes of service).]

§ 213.6. Eligibility points.

(a) An active member shall accrue one eligibility point for each year of credited service or fractional part of a year of credited service based on the corresponding fractional eligibility point, as a member of the System or State [Employees'] Employees' Retirement System. A member shall also accrue an additional 2/3 of an eligibility point for each year of credited Class D-3 service under the State system.

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§ 213.9. Eligibility for death benefits.

(a) In the event of the death of a member, the member's beneficiary, or 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 Retirement Code (relating to eligibility for annuities). If the deceased member is not eligible for an annuity, the member's beneficiary or estate shall only be entitled to receive the accumulated deductions standing to 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 20 Pa.C.S. § 3101 (relating to [payment of wages, salary, vacation benefits] payments to family and funeral directors).

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CONTRIBUTIONS

§ 213.23. [Member contributions for creditable school service] (Reserved).

[(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 Employees' Retirement System may, if the member elects multiple service, apply for and receive credit for total previous school service, if the service is certified by the Board and the member makes the required member contributions for the purchase of the service, regardless of the amount of school service previously credited, if any.

(b) 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.

(c) 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 T-C, and to provide an annuity as a member of the class for the additional credited service, if the amount which shall be paid is the sum of the amount required in subsection (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 Retirement Code (relating to actuarial cost method), during the period, multiplied by the compensation which was or would have been received during the period, together with statutory interest during all subsequent periods of school and State service up to the date of purchase.

(d) Retirement Code reference: Section 8323 of the Retirement Code (relating to member contributions for creditable school service).]

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

(a) Source of contributions. As provided in sections 8303 and 8304 of the Retirement 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, when [a school district] an employer has failed to credit service through administrative error, [the employing school district, as] the employer[,] is required to pay its share of the contributions for the service, although the active member is responsible for the member's share.

* * * * *

(3) Except for sabbatical leaves of absence, in the case of approved leaves of absence, the [employe] employee is 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 the leaves currently based on the [**employee's**] **employee's** salary as if the [**employee**] **employee** had been in full-time employment during the leave period, the [**employee**] **employee** is only required to pay the [**employee**] **employee** share, whereupon the employer has 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 as follows: The average of the first 3 years' salaries subsequent to 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 Retirement 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. All amounts certified by the Board for the purchase of the service shall be in accordance with methods approved by the actuary. Nonintervening military service may not be purchased unless the active member has **received at least 3 years of salary and** completed at least 3 years of subsequent credited school service as **either** a Class T-C or Class T-D member.

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§ 213.25. Incomplete payments.

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(c) *Death of a member.* If a member applies for the purchase of service and dies prior to certification by the Board of the amount due for the service, the [**member's legally constituted representative may purchase the service either by payment of a lump sum, within 30 days**] **purchase of service shall be completed** after the certification is made, [**or**] by reducing the annuity benefit by the actuarial equivalent of the debt, including statutory interest; **provided, in the case of nonschool service, the purchase does not negatively impact the present value.**

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§ 213.27. Payments by employers.

(a) To facilitate the payment by employers of the contributions required [**on a**] quarterly [**basis of**] **based on the** compensation paid during the pay period representing that quarter, each employer shall be required to file monthly reports representing the total compensation paid for that month no later than [**15**] **10** days following [**its termination**] **the end of that month.** The Board will, upon receipt of the monthly reports [**totaling**] **comprising** each quarter, bill the employer no later than 45 days subsequent to the [**termination**] **end** of the preceding quarter, the billing to be **either** an actual billing based on payroll for the preceding quarter or an estimated billing, as the case may be. Subsequent to the billing, the employer shall pay the billed amount no later than [**10 days prior to the end of the billing**] **5 business days after the employer's receipt of the Commonwealth employer contribution reimbursement subsidy for the quarter.** If an employer fails to make timely payments, the Board will certify to the State Treasurer and Secretary of Education, the [**names**] **name of [an employer found delinquent by failure to pay the delinquency] that delinquent employer,** whereupon the **Commonwealth employer contribution reimbursement** subsidy due

to that employer nearest the date following the delinquency shall be reduced by the amount of the delinquency or amount found owing.

(b) [**The Board will, if**] **If** an employer is delinquent in paying employer contributions as provided in subsection (a) or in failing to remit [**employee**] **employee** contributions in a timely manner as required in section 8506(c) of the Retirement Code (relating to duties of employers), **the Board will** impose an interest charge of 6% per annum to the date of payment, to be added to the amount of the delinquency, whether payment shall occur through the subsidy deduction method or shall be made directly to the Board by the delinquent employer.

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BENEFITS

§ 213.41. Return of accumulated deductions.

(a) A member who elected to receive only accumulated deductions, in lieu of any other benefit to which the member would otherwise be entitled, shall, by the election, be deemed to have irrevocably waived entitlement to the other benefits except as otherwise provided in the event a member returns to school service **and qualifies for membership in the System.**

* * * * *

§ 213.44. Disability annuities.

(a) [**A**] **An active or inactive** member with at least 5 [**, but less than 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 the disability annuity. A member entitled to a disability annuity, having [**ten**] **five** or more eligibility points, is entitled to select a joint and survivor option on that portion of the annuity to which the member is otherwise entitled.

(b) A disability annuitant no longer entitled to disability annuity in accordance with section 8505(c)(2) or 8508(b) or (c) of the Retirement Code (relating to duties of board regarding applications and elections of members; and rights and duties of annuitants), is entitled to either file an application for the election of optional modification of the annuity to which the annuitant would be otherwise entitled in accordance with section 8342 of the Retirement Code (relating to maximum single life annuity) or vest the benefit, if the annuitant has at least [**ten**] **five** or more eligibility points. If a disability annuity ceases and the member does not return to school service, the member is, if the member has not already received on account of the member's annuity the amount of the accumulated deductions, 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 Retirement 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 [**employee, if**] **employee, provided,** the annuitant will not receive less than his member's annuity or the amount to which the annuitant may be entitled under section 8342 of the Retirement Code [**(relating to maximum single life annuity)**] whichever is greater.

(d) Retirement Code reference: [**Section**] **Sections 8307(d) and 8344** of the Retirement Code (relating to **eligibility for annuities;** and disability annuities).

§ 213.45. Change in benefit payment plan.

(a) Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, an annuitant may declare an intent to change the final terms of the benefit payment plan by filing a written intent with the System within 30 days of the annuitant's receipt of the initial benefit letter sent to the [member] annuitant by the System. The letter will be deemed to be received by the annuitant 3 business days after the date of mailing.

(b) Notwithstanding the otherwise irrevocable nature of the election of a benefit payment plan, an annuitant may declare an intent to change the final terms of the benefit payment plan by filing a written intent with the System within 30 days of the annuitant's receipt of the statement provided for in section 8505(g) of the Retirement Code (relating to duties of board regarding applications and elections of members), [the] which statement will be deemed to be received by the annuitant 3 business days after the date of mailing, if one of the following conditions are met:

(1) The annuitant's retirement records contain an error regarding service credit, salary or accumulated deductions [which] that was not corrected by the System until after the application for an annuity was filed, and either of the following exists:

* * * * *

(d) An annuitant who has declared an intent to change under subsection (a) or (b) will not be permitted to complete the change unless the annuitant receives counseling on the benefits available under the Retirement Code, or executes a written waiver of counseling on a form prescribed by the System. The counseling is subject to the following rules:

(1) The counseling is provided by an [employe] employe or authorized representative of the System.

* * * * *

(3) The Secretary of the Board or a designee may extend the period for counseling upon written request filed within the 30-day period, but in no case will the period for counseling be greater than 90 days.

* * * * *

(5) If the annuitant fails to receive counseling, or to file a written waiver[,] of counseling within the allowed time period, the intent to change will be deemed withdrawn.

* * * * *

(h) Changes will be retroactive to the member's original effective date of retirement unless the date is changed as part of the changed application for an annuity.

(1) For a changed application to become effective, the annuitant shall either return any excess monthly annuity payments or moneys withdrawn under Option 4 [either by:] within 30 days after the date of certification of the amount due or elect an actuarial reduction to be applied to the annuitant's account.

[(i) A lump sum payment within 30 days after the date of certification of the amount due.

(ii) Actuarial reduction.]

(2) For an annuity to be voided, the annuitant shall either return all moneys received in a lump sum within 30 days after the date of certification of the amount due or elect [a debt] an actuarial reduction to be applied to the annuitant's account.

(3) If the annuitant fails to return the required amounts or elect [a debt] an actuarial reduction as set forth in paragraphs (1) and (2), as the case may be, [the intent to change or void will be deemed withdrawn] within 30 days, an actuarial reduction shall be applied to the annuitant's account.

(i) For purposes of this section, the System will consider a document as filed only upon actual receipt by the System. For a document properly sent by certified mail, return receipt requested, the System will deem the postmark date to be the date of filing. For a document sent by facsimile, the System will accept the date of the facsimile as the date of filing, if the original document is actually received within 10 days of the date of the facsimile.

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§ 213.46. Termination of annuities.

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(c) [Emergency return] Return to school service in the event of emergency or shortage. An annuitant returning to school service in an emergency or shortage situation, as provided in section 8346(b) of the Retirement Code, and who works [in excess of 95 days in a] beyond the school year during which the emergency or shortage occurs, shall suffer discontinuance of an annuity [from the 96th day of the service] thereafter, and the Board will make adjustment as the case may warrant.

(d) Return to school service in an extracurricular position. An annuitant may be employed under separate contract by a public school or charter school in an extracurricular position that is performed primarily outside regular instructional hours and is not part of a mandated curriculum without loss of annuity. For purposes of this section, the term "extracurricular position" means a contract position, including the position of athletic director, filled by an annuitant that is separate from the established academic course structure.

(e) Termination of annuitants—Independent contractor. An annuitant may render service without discontinuance of an annuity if the annuitant renders it in the capacity of an independent contractor for a sum certain and for a specific period of time, under a contract approved by the employer. The Board has the right to determine whether the services to be performed are such as to warrant the conclusion that it is an independent contract relationship. The Board may also inquire as to the circumstances surrounding an annuitant who seeks to render services as an independent contractor to determine whether the relationship does exist, thereby entitling the person to both an annuity and the contractor or consultant fees simultaneously. In any case in which the Board finds that the relationship may be contrary to the intent of this section, the Board has the right to discontinue the annuity or make the adjustment as the circumstances warrant.

[(e)] (f) * * *

§ 213.47. Death benefits.

(a) If a beneficiary is not designated, or if a designated beneficiary predeceases the member or fails to survive [to receive any of the death benefits provided in section 8347 of the Retirement Code (relating to death benefits),] the member by 30 days, the benefits shall be payable to the estate of the member, or to

the next of kin, 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors), as the case may be.

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

(c) Retirement Code reference: **[Section] Sections 8347 and 8349** of the Retirement Code **(relating to death benefits; and payment of benefits)**.

§ 213.49. Payment of benefits.

(a) **[No annuity] An annuity** granted under the Retirement Code will **not** be paid in other than equal monthly **[installments] payments**. Option 4 may provide for **[a]** lump sum **[payment] installments** of no more than the accumulated deductions to be paid to the member before **or after** equal monthly **[installments] payments** commence.

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**CHAPTER 215. GENERAL ADMINISTRATION
GENERAL PROVISIONS**

§ 215.2. Administrative duties of the Board.

(a) **[The minutes and other supporting records of Board meetings will be available for public inspection at the offices of the Board during normal working hours. No other records of the Board will be available for inspection by the public except upon specific approval by the Secretary 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 which may impose a tax liability upon a member or beneficiary. The sole responsibility for 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 advice.

[(c)] (b) * * *

[(d)] (c) * * *

[(e)] (d) * * *

[(f)] (e) * * *

[(g)] (f) The Board will credit to the account of each member all amounts paid by the member into the fund, including the member's contributions for current service, payroll deductions for the purchase of service as otherwise provided in this part or lump sum payments for the purchase of service. A person or governmental employer may not make payments on behalf of the member unless authorized by the Retirement Code or this part. 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 the accumulated deductions, if 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] and** school service.

[(h)] (g) * * *

§ 215.5. Duties of the Board.

(a) *Application, elections and disability annuities.* Duties of the Board regarding applications and elections of members and disability annuities 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 other medical examiners it may engage, cause the applicant to be examined. On the basis of the medical evidence submitted, a recommendation shall be submitted to the Board stating whether a disability 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 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]**.

* * * * *

(c) *Payment of annuities.* Payment of annuities shall include tax information required by the Internal Revenue Code **[of 1986]**.

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

* * * * *

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

(3) In cases of doubt, the Board will determine whether any person is a school **[employe] employee** within the meaning of the Retirement Code. **[It may] The Board** will 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.

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§ 215.6. Duties of employers.

(a) The following procedures shall be employed for reporting salaried, per diem and hourly **[employes] employees**:

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

(i) Part time salaried **[employes] employees**, 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] employees**. If

requested, the employer shall furnish, 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 the individuals.

(ii) This procedure does not affect the enrollment of salaried **[employes] employees** who are currently members of the System. The member's purchase of 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.

(2) *Per diem and hourly [employes] employees*— Since a per diem or hourly **[employe] employee** is required to become a member of the System during a school year in which the **[employe] employee** works 80 days or 500 hours, an employer is responsible for determining if that person becomes eligible for membership during the fiscal year.

(i) If the employer anticipates that an **[employe] employee** shall **[becomes] become** eligible for membership during the **[fiscal] school** year, the **[employe] employee** shall be enrolled as a member at the beginning of the **[fiscal] school** year, or upon employment, and contributions shall be deducted on a current basis. This service shall be counted for retirement purposes.

(ii) If an **[employe] employee** is enrolled as a member at the beginning of the **[fiscal] school** year, or when employed, and does not qualify during that **[fiscal] school** year, the **[employe] employee** is then entitled to a refund of accumulated deductions. If an **[employe] employee** is not enrolled at the beginning of the **[fiscal] school** year, or date of employment, but qualifies during the **[fiscal] school** year, the **[school district] employer** shall make deductions from that time forward and the **[employe shall then purchase the] employee and employer shall be billed for the first 500 hours or 80 days [without application of interest]**.

(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 the employment to insure that the 95-day period for a continued receipt of the annuity is not exceeded. If that limitation is exceeded in a school year, the employer shall reenroll the annuitant from the 96th day of employment as an active member of the System, whereupon an annuity adjustment shall be made, as the case may warrant.**

(c) Retirement Code reference: Section 8506 of the Retirement Code (relating to duties of employees).

§ 215.7. Rights and duties of school **[employes] employees** and members.

(a) *Information on new employees.* Each new school **[employe] employee** shall provide the employer with a complete record of previous school or State service, or creditable nonschool service, proof of date of birth, in the order of preference set forth in subsection (b), home address, current status in the **[system and in the] System** and other information 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 right to benefits based on the erroneous information or on any of the required information which the member failed to provide, intentionally or otherwise. If the Board finds that a member is receiving an annuity based on false, misleading or improper information, the additional amounts received predicated on 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 the remaining benefits shall be correspondingly decreased.

* * * * *

(c) *Election of multiple service.* An active member from and after the effective date of the Retirement Code who was formerly a member in the State **[Employees'] Employees' Retirement System**, may elect multiple service coverage if the election is made no later than **[30] 365** days after active membership in this System.

(d) *Beneficiaries.* Every member shall nominate a beneficiary and, **if desired, a contingent beneficiary, [if desired, on a form to be filed] in writing** with the Board **[and supplied by the Board]**. In all these 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 Option 1 under section 8345 of the Retirement Code (relating to member's options). If the beneficiary or designated contingent beneficiary fails to survive the member, the payment, subject to the limitation in 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, 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) *Rights of vestees.* A vestee may, subsequent to vesting, and at any time during the vesting period, withdraw the accumulated deductions, thereby forfeiting other benefits to which the vestee would be otherwise entitled, or apply for an annuity, if the vestee has at least **[ten] five** eligibility points. The vestee shall also nominate a beneficiary to receive the vested benefits should the vestee fail to survive the receipt of the benefit.

(g) *Right of vestee at superannuation age.* For a vestee to be entitled to, and receive, an annuity, effective the date the vestee attains superannuation age, the vestee shall file an application no later than 90 days thereafter. 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, the vestee shall be deemed to have elected the automatic death benefit Option 1. **[If the vestee fails to do anything within 7 years subsequent to superannuation age, the vestee shall be deemed to have elected to receive the accumulated deductions and shall, upon application, be entitled to receipt of the deductions, thereby forfeiting any other benefit.]**

(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:

* * * * *

(2) If the member [**selects**] **elects** a survivor annuity option, a new survivor annuitant may not be named except when the survivor annuitant predeceases the member or [**there is**] **the member has** a change in marital status subsequent to the election of the option. In these cases, the annuity shall be recomputed to be actuarially equivalent as of the date of recomputation to the annuity in effect immediately prior thereto. In this case, the member may elect a new option in addition to the new survivor annuitant. A benefit plan may not be changed by an annuitant.

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(i) Retirement Code reference: Section 8507 of the Retirement Code (relating to rights and duties of school [**employees**] **employees** and members).

MISCELLANEOUS PROVISIONS

§ 215.33. Taxation, attachment and assignment of funds.

(a) The exemption provided in this section also includes a spouse's election authorized under 20 Pa.C.S. §§ 6108 and 6111 (relating to designation of beneficiaries of insurance or employee death benefits not testamentary; and, [**repealed**] **combination of charitable trusts (Repealed)**) 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 to collateralize funds in the system to the extent of \$750. From and after 3 years from the effective date of the Retirement Code, the Board will not honor a credit union loan which had, under prior law, been forwarded to the Board under the provisions thereof. A credit union may not, directly or indirectly, use an existing assignment on record with the Board as a device to renew or reassign an existing loan to collateralize the funds in the System.**]

* * * * *

§ 215.35. [General regulations] (Reserved).

[**(a) Former annuitants who are active members of the System on the effective date of the Retirement Code are not subject to the recalculation of annuities of annuitants who return to school service thereafter.**

(b) The rights of members of Class T-B, as provided in section 301(2)(c) and (d) of the Public School Employees' Retirement Code of 1959 (24 P. S. § 3301(2)(c) (repealed)) shall continue.

(c) The provisions relating to former teachers as provided in sections 303(3) and 407(1) of the Public School Employees' Retirement Code of 1959 (24 P. S. §§ 3303(3) and 3407(1) (repealed)), shall continue.

(d) As applicable to members terminating school service on or after March 1, 1974, the provisions relating to the purchase of credit for previous

school or creditable nonschool service and the calculation of benefits shall be effective March 1, 1974.

(e) The provisions relating to the crediting of statutory interest to the accounts of members on leave without pay shall become effective on July 1, 1975.

(f) Part-time employe membership, as provided by the Retirement Code, shall become effective with the beginning of the school year 1975-76, subject to the limitations based upon qualification, as provided in this part.

(g) The provisions relating to eligibility for disability annuities, shall be effective, as applied to all active or inactive members, from December 1, 1974.

(h) Retirement Code reference: Section 8535 of the Retirement Code (relating to payments to school entities by Commonwealth).]

§ 215.36. [Optional alternate retirement programs] (Reserved).

[**(a) Under section 8301(a)(1) of the Retirement Code (relating to mandatory and optional membership), certain school employes may elect not to join the System in favor of an optional alternate retirement program approved by the employer.**

(1) Every employee who is eligible for membership in the optional alternate retirement program shall make the election within 30 days of the first date of active employment. Employees not exercising the option to join the optional alternate retirement program shall be deemed to have chosen to commence active membership in this System, unless they have elected membership in the State Employees' Retirement System.

(2) When an eligible employee elected to participate in the optional alternate retirement program in accordance with the provisions of paragraph (2), as it existed on April 15, 2005, or paragraph (4) as it existed on April 15, 2005, or elects to participate in the optional alternate retirement program in accordance with paragraph (1), the election is final and binding so long as the employee remains eligible to remain in the optional alternate retirement program. When an employee later is employed in a capacity which does not qualify for membership in the optional alternate retirement program, the employee shall, upon meeting the qualifications for membership in the System, either make contributions to the fund or reinstate the former credited service for which contributions had been withdrawn. Remittance of contributions or reinstatement of former credited service shall be made in accordance with the applicable provisions of the Retirement Code. Service, salary or other compensation paid to an employee while a member of the optional alternate retirement program will not be credited toward membership in, or retirement benefit from this System.

(b) Retirement Code reference: Section 8326 of the Retirement Code.]

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