

RULES AND REGULATIONS

Title 4—ADMINISTRATION

STATE EMPLOYEES' RETIREMENT BOARD

[4 PA. CODE CH. 249]

Rights and Duties of Employees and Members

This final-form rulemaking will amend 4 Pa. Code § 249.7 (relating to rights and duties of employees and members) by adding subsection (h). This additional subsection is being added to clarify that a nomination of beneficiary must be on a form supplied by the State Employees' Retirement Board (Board). This clarification is being made to ensure that the State Employees' Retirement System (SERS) can adequately identify persons named as beneficiaries on SERS members' retirement accounts.

A. *Effective Date*

The amendment will be effective upon publication in the *Pennsylvania Bulletin* as a final rulemaking.

B. *Contact Person*

For further information contact Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 787-9657; or Jill S. Vecchio, Counsel, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 783-7317.

C. *Statutory Authority*

This final rulemaking is being made under the authority of 71 Pa.C.S. § 5902(h) (relating to administrative duties of the board) of the State Employees' Retirement Code (Retirement Code).

D. *Summary of the Final-Form Rulemaking*

This additional subsection is being added to clarify that a nomination of beneficiary must be on a form supplied by the Board. This clarification is being made to ensure that the SERS can adequately identify persons named as beneficiaries on SERS members' retirement accounts.

E. *Summary of Comments and Responses*

No comments were received from the House State Government Committee and the Senate Finance Committee (Committees) or the public for the Board to consider in preparing this final-form regulation. One comment was received from the Independent Regulatory Review Commission (IRRC). After receiving IRRC's comment and completing an internal review of the final-form regulation, the Board made additional changes to the final-form regulation, which are explained as follows.

IRRC's Comment—§ 247.7. Death Benefits.—Clarity.

The Board was proposing to add subsection (c) to provide additional guidance on what must be contained on the Board's nomination of beneficiary form. The new language did not create a binding requirement because all provisions included the word "should." The term "should" is nonregulatory language which indicates that the provisions are optional. It is inappropriate to include optional provisions in a regulation. If the Board wants the new language to be binding, the word "should" must be changed to "shall." If the new language is intended to be a recommendation and not a requirement, the Board

should withdraw the regulation and place the language in a policy statement or guidance document.

Response:

After review of IRRC's comment regarding the clarity of subsection (c), it was determined that as originally drafted, the final-form regulation was too constricting on SERS members when filing a nomination of beneficiary form. It was not the intent to so tightly constrain the regulation as to not permit inadvertent errors that would act to invalidate entire beneficiary nomination forms. The new language is in accordance with the Board's original review of the purpose of this regulation, which is to state what needs to be on a SERS beneficiary form for it to be approved by SERS. Therefore, all language contained in the regulation has been removed and replaced with language that will not so tightly constrain SERS members in filing nominations of beneficiary forms with the Board. The new language is in accordance with section 5907(e) of the Retirement Code (relating to rights and duties of State employees and members) and acts to clarify for SERS members that a nomination of beneficiary must be in writing and on a form to be supplied by and filed with the Board.

Additional Amendments:

SERS, after review of the original final-form regulation, determined that a regulation such as this would be better located in § 249.7 which pertains to the rights and duties of employees and members of SERS. As such, a regulation that mandates that a nomination of beneficiary must be in writing and on a form to be supplied by and filed with the Board is better situated in § 249.7, rather than as previously suggested to be contained in § 247.7, which deals with death benefits.

Therefore, this final-form regulation has been amended so that upon passage, it will be included in § 249.7.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulation.

Benefits

The regulation is intended to alleviate confusion and prevent possible disputes with regard to proper naming of beneficiaries by members.

Costs

There are no costs to the Commonwealth, its citizens or State employees associated with this proposal.

Compliance Costs

The final-form regulation is not expected to impose any additional compliance costs.

G. *Sunset Review*

A sunset review is not applicable.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 18, 2008, the Board submitted a copy of the proposed rulemaking, published at 38 Pa.B. 613 (February 2, 2008), to IRRC and to the Committees for review and comment.

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5a(j,2)), the Board is required to provide IRRC and the Committees with copies of the comments received

during the public comment period, as well as other documents requested. No comments from the Committees or the public were received. The Board received one comment from IRRC, as illustrated and discussed previously.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 24, 2010, this final-form regulation was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 25, 2010, and approved the final-form regulation.

I. Findings

The Board finds that:

(1) Public notice of intention to amend this regulation was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) Commonwealth Documents Law (CDL) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2 by publication at 38 Pa.B. 613.

(2) The final-form rulemaking is necessary and appropriate for the administration of the Retirement Code.

J. Order

The Board, acting under 71 Pa. C.S. § 5902(h) and the CDL, orders that:

(a) The regulations of the Board, 4 Pa. Code Chapter 249, are amended by amending § 249.7 to read as set forth in Annex A.

(b) The amendment shall be submitted to the Office of Attorney General for approval as to legality as required by law.

(c) The Secretary of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

LEONARD KNEPP,
Secretary

(Editor's Note: The proposal to amend § 247.7 (relating to death benefits), included in the proposal at 38 Pa.B. 613, has been withdrawn by the Board.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 1471 (March 13, 2010).)

Fiscal Note: 31-11. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 4. ADMINISTRATION

PART X. STATE EMPLOYEES' RETIREMENT BOARD

CHAPTER 249. ADMINISTRATION, FUNDS ACCOUNTS, GENERAL PROVISIONS

Subchapter A. ADMINISTRATION

§ 249.7. Rights and duties of employees and members.

(a) *Proof of date of birth.* The Board will accept certification from the employing agency as to the proof of the date of birth for purposes of this section, which shall also include certification by the member, as required by the Board. The proof of date of birth shall be furnished concurrently with the Application for Membership. Under section 5907(a) of the code (relating to rights and duties

of State employees and members) each new State employee shall furnish proof of his date of birth. The following, in the order of preference, will be acceptable:

- (1) Birth certificate.
- (2) Baptismal record.
- (3) Selective service record.
- (4) Armed forces discharge.
- (5) Passport.
- (6) School record.
- (7) Life insurance policy.
- (8) Naturalization record.
- (9) Alien registration record.

(10) Another record that may be submitted by the member, which is acceptable to the Board.

(b) *Time when service purchase is paid.* Under section 5907(d) of the code, an eligible school employee who desires to receive credit for service in this System or to become a full coverage member shall, upon written agreement to do so, make payment for the purchase in a lump sum and not by payroll deductions within 30 days after billing.

(c) *Full coverage election.* In the event a joint coverage member elects to vest his retirement rights, under section 5907(f)(2) of the code, the member shall concurrently elect to become a full coverage member and agree to pay, within 30 days of certification, the amount due. In the absence of an election, an election for full coverage membership shall be irrevocably forfeited unless the member returns to service, whereupon membership shall be mandatory and shall be retroactive for all periods of State service, with appropriate statutory interest added to the charges therefor.

(d) *Effect of election to receive a benefit.* A member who terminates State service, who is eligible to elect to withdraw his total accumulated deductions, or vest his retirement rights, or receive an immediate annuity, shall, by exercising the election, be deemed to have made an irrevocable choice which may not be changed unless the change was made prior to the effective date of termination of service. For the purposes of this section there may be no termination of service if a person transfers between departments or returns to the same department within 2 weeks after the last day of compensation. In the event a member has filed an application to withdraw his total accumulated deductions and has returned to State service prior to receipt of payment therefore, the member will not be deemed to be eligible for a withdrawal of the accumulated deductions. An election to receive any of the three benefits made after the effective date of termination of service shall be deemed to be irrevocable and no change may be permitted, except to elect early retirement from vesting.

(e) *Ineligibility to select any benefit.* When a member enters upon retirement, the member shall either execute the application on his own behalf or, in the case when the member is mentally incompetent to do so, the application shall be executed by a guardian appointed by a court. In the case of a member who is physically unable to file the application, it may be filed by anyone possessing a power of attorney. In all instances, the Board will be furnished and will review the legal documents designating persons who are eligible to act on behalf of eligible members.

(f) *Effect of election of benefits.* A member who is eligible for a maximum annuity or a reduced annuity under Option 1, 2, 3 or 4, upon filing an application to

receive the benefits, shall, subsequent to termination of service, be deemed to have irrevocably selected the benefit and no change may be permitted, except as provided in section 5907(j) of the code.

(g) *Rights and duties of State employees—members—disability applicants.* A disability applicant who is required by the Board to furnish additional medical documentation to support his application, shall provide the documentation within 30 days of the request, or the Board may render the disability applicant null and void. In that event, or in the event the Board denies a disability applicant for insufficient medical evidence, the applicant may still file, within 90 days after notification, an application to vest or take an annuity, if the applicant is eligible for same. The filing shall be considered timely, as of the original eligibility date, for the purposes of payment of other benefits or vesting, as the case may be.

(h) *Beneficiary nomination.* Every member shall nominate a beneficiary and, if desired, a contingent beneficiary, in writing on a form to be supplied by and filed with the Board.

[Pa.B. Doc. No. 10-684. Filed for public inspection April 16, 2010, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 229]

Interstate Motor Carrier Safety Requirements

The Department of Transportation (Department), under the authority contained in 75 Pa.C.S. §§ 4704 and 6103 (relating to inspection by police of Commonwealth personnel; and promulgation of rules and regulations by department), hereby adopts amendments to Chapter 229 of the Department's regulations (relating to interstate motor carrier safety requirements), to read as set forth Annex A.

Purpose of Chapter

The purpose of Chapter 229 is to prescribe the minimum requirements and qualifications for drivers, vehicles and other matters relating to the interstate operation of commercial vehicles.

Summary of Comments and Changes in Final Adopted Regulation

The amendments to the regulations were published as a proposed rulemaking at 39 Pa.B. 997 (February 21, 2009). The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and the House and Senate Transportation Committees (Committees).

Comments were received from Officer Thomas Sanders and from IRRC. Officer Sanders noted that the existing language of § 229.2 (relating to scope), indicates that the regulation applies to “vehicles, including motor vehicles and combinations of vehicles, and drivers of motor vehicles engaged in interstate commerce if the registered gross weight of the vehicle or the combination of vehicles exceeds 17,000 pounds.” He indicated that the reference to 17,000 pounds may be confusing and requested that the language under § 229.2 be modified to be consistent with the definition of “motor carrier vehicle” as it appears in 75 Pa.C.S. (relating to the Vehicle Code). The Department agrees that the reference to a vehicle which “ex-

ceeds 17,000 pounds” should be removed and it was removed (placed inside brackets) in the proposed rulemaking. In its place, the proposed amendments referenced a “commercial motor vehicle,” the term used and defined in the Federal Motor Carrier Safety Regulations. Officer Sanders simply misread the bracketing. Accordingly, no change to the proposed rulemaking was necessary to address this concern.

IRRC questioned the propriety of including in the regulation the adoption, as statements of policy, of the interpretations of the Federal Motor Carrier Safety Regulations in § 229.17 (relating to Interpretations of Federal Motor Carrier Safety Regulations). IRRC pointed out that statements of policy are interpretative and fall outside the regulatory review process, although similar language is found in the currently existing regulations in § 229.411 (relating to adoption of Interpretations of Federal Motor Carrier Safety Regulations, Federal Highway Administration, United States Department of Transportation) as well as in § 231.411 (relating to adoption of interpretations of Federal Motor Carrier Safety Regulations, Federal Highway Administration, United States Department of Transportation), the Department has amended the language of § 229.17 to more clearly express its intent that any interpretations issued by the Federal Motor Carrier Safety Administration (FMCSA) should be viewed as guidance under these regulations as well.

The FMCSA Program periodically publishes interpretations of its regulations. The purpose of adopting the interpretations is to ensure that motor carriers, drivers and law enforcement may rely on the FMCSA interpretations. Additionally, adopting the FMCSA interpretations will enhance the uniform interpretation and implementation of the motor carrier safety regulations in this Commonwealth consistent with its application throughout the rest of the United States.

Persons and Entities Affected

These amendments will affect all motor carriers and drivers who operate in interstate commerce.

Fiscal Impact

Implementation of these amendments will not require the expenditure of any additional funds by the Commonwealth or local municipalities. These amendments will not impose any additional costs on the regulated community.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 21, 2009, the Department submitted a copy of the proposed rulemaking to IRRC and to the Committees for review and comment.

In preparing these final-form regulations, the Department has considered all comments received from the public, IRRC and the Committees.

Effective Date

The Department will make these amendments effective upon publication in final form.

Sunset Provisions

The Department is not establishing a sunset date for these regulations, since these regulations are required to participate in the FMCSA Program. The Department, however, will continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person for technical questions about this final-form rulemaking should be directed to Daryl St.

Clair, Bureau of Maintenance and Operations, 400 North Street, 6th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120, (717) 787-6899.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 229, are amended by deleting §§ 229.4—229.13, 229.21, 229.22, 229.31, 229.32, 229.41—229.44, 229.51—229.54, 229.61—229.66, 229.71 and 229.81—229.85; 229.101—229.111, 229.121—229.128, 229.131—229.135, 229.141—229.144, 229.151—229.153, 229.161—229.163 and 229.171—229.181; 229.191—229.193, 229.201, 229.202, 229.208, 229.210—229.223, 229.231—229.243, 229.251—229.254, 229.261—229.263, 229.271, 229.272, 229.281—229.299, 229.301, 229.311—229.314 and 229.321—229.325; 229.331 and 229.341—229.348; 229.361—229.371; 229.381—229.391; 229.431 and 229.432; 229.451—229.453; by amending §§ 229.1—229.3; and by adding §§ 229.14—229.17 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ALLEN D. BIEHLER, P. E.
Secretary

Fiscal Note: 18-413. No fiscal impact; (8) recommends adoption.

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 1471 (March 13, 2010).)

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

CHAPTER 229. INTERSTATE MOTOR CARRIER SAFETY REQUIREMENTS

Subchapter A. GENERAL

§ 229.1. General information and requirements.

(a) *Purpose.* This chapter prescribes the minimum requirements and qualifications for drivers, vehicles and other matters relating to the interstate operation of commercial motor vehicles. Much of this chapter incorporates by reference provisions of 49 CFR Parts 382, 385, 387 and 390—396. Appropriate parts may be obtained from the following:

(1) United States Government Printing Office, Book Store, Room 118, Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, (412) 644-2721.

(2) United States Government Printing Office, Book Store, 100 North 7th Street, Robert Morris Building, Philadelphia, Pennsylvania 19103, (215) 597-0677.

(3) United States Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, (202) 655-4000.

(4) Commercial Vehicle Safety Alliance, 1101 17th Street NW, Suite 803, Washington, DC 20036.

(b) *Application.*

(1) Every motor carrier and its officers, drivers, agents, employees and representatives involved in, or related to, the transportation of interstate commerce shall comply with this chapter and take measures necessary to ensure compliance.

(2) Officers, agents, representatives, drivers and employees of motor carriers involved or concerned with the management, maintenance, operation or driving of vehicles engaged in interstate commerce shall be conversant with and knowledgeable of the rules in this chapter.

(c) *Forms and documents.* References to forms in the Federal regulations incorporated by reference will be replaced by the appropriate forms prescribed by the Department.

§ 229.2. Scope.

(a) Except as otherwise provided, this chapter applies to commercial motor vehicles engaged in interstate commerce.

(b) This chapter applies to motor carriers of property or passengers, whether common carriers, contract carriers or private carriers, involved in interstate commerce.

§ 229.3. Definitions.

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

Qualified Commonwealth employee—The term as it is defined in 75 Pa.C.S. § 102 (relating to definitions).

§§ 229.4—229.13 (Reserved).

§ 229.14. Adoption of portions of 49 CFR by reference.

The Department incorporates by reference the following portions of 49 CFR (relating to transportation), subject to §§ 229.3 and 229.15 (relating to definitions; and additions or modifications to 49 CFR).

(1) Part 382 (relating to controlled substances and alcohol use and testing).

(2) Part 385 (relating to safety fitness procedures).

(3) Part 387 (relating to minimum levels of financial responsibility for motor carriers).

(4) Part 390 (relating to Federal motor carrier safety regulations; general).

(5) Part 391 (relating to qualifications of drivers and longer combination vehicle (LCV) driver instructors).

(6) Part 392 (relating to driving of commercial motor vehicles).

(7) Part 393 (relating to parts and accessories necessary for safe operation).

(8) Part 395 (relating to hours of service of drivers).

(9) Part 396 (relating to inspection, repair, and maintenance).

§ 229.15. Additions or modifications to 49 CFR.

A reference to special agent includes a police officer or a qualified Commonwealth employee.

§ 229.16. Adoption of Out-of-Service criteria.

The out-of-service criteria contained in the North American Standard Out-of-Service criteria is incorporated by reference.

§ 229.17 Interpretations of Federal Motor Carrier Safety Regulations.

The Department will be guided by interpretations of the Federal Motor Carrier Safety Regulations issued by the Federal Motor Carrier Safety Administration for those parts enumerated in § 229.14 (relating to adoption of portions of 49 CFR by reference). Copies of these interpretations may be obtained by contacting the Director, Bureau of Highway Safety and Traffic Engineering, 400 North Street, P. O. Box 2047, Harrisburg, PA 17105-2047, or through the Federal Motor Carrier Safety Administration web site: http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.aspx?section_type=G.

§ 229.21 (Reserved).

§ 229.22 (Reserved).

§ 229.31 (Reserved).

§ 229.32 (Reserved).

§§ 229.41—229.44 (Reserved).

§§ 229.51—229.54 (Reserved).

§§ 229.61—229.66 (Reserved).

§ 229.71 (Reserved).

§§ 229.81—229.85 (Reserved).

§§ 229.101—229.111 (Reserved).

§§ 229.121—229.128 (Reserved).

§§ 229.131—229.135 (Reserved).

§§ 229.141—229.144 (Reserved).

§§ 229.151—229.153 (Reserved).

§§ 229.161—229.163 (Reserved).

§§ 229.171—229.181 (Reserved).

§§ 229.191—229.193 (Reserved).

§ 229.201 (Reserved).

§ 229.202 (Reserved).

§ 229.208 (Reserved).

§§ 229.210—229.223 (Reserved).

§§ 229.231—229.243 (Reserved).

§§ 229.251—229.254 (Reserved).

§§ 229.261—229.263 (Reserved).

§ 229.271 (Reserved).

§ 229.272 (Reserved).

§§ 229.281—229.299 (Reserved).

§ 229.301 (Reserved).

§§ 229.311—229.314 (Reserved).

§§ 229.321—229.325 (Reserved).

§ 229.331 (Reserved).

§§ 229.341—229.348 (Reserved).

§§ 229.361—229.371 (Reserved).

§§ 229.381—229.391 (Reserved).

§ 229.431 (Reserved).

§ 229.432 (Reserved).

§§ 229.451—229.453 (Reserved).

[Pa.B. Doc. No. 10-685. Filed for public inspection April 16, 2010, 9:00 a.m.]