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Repeal Analysis Form		INDEPENDENT REGULATORY REVIEW COMMISSION	
(1) Agency Public School Employees' Retirement System		This space for use by IRRC: IRRC Number: 2320 Date received:	
(2) I.D. Number (Governor's Office Use) 11-			
(3) Short Title Repeal of Transitional Provisions for Alternate Retirement Plans			
(4) PA Code Cite 22 Pa.Code §§ 215.36		(5) Agency Contact and Telephone Number: Frank Ryder, 717-720-4733 Charles K. Serine, 717-720-4679	
(6) Type (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking <input type="checkbox"/> Omitted		(7) Is a 120 Day Emergency Certification Attached? <input type="checkbox"/> Yes: By the Governor <input type="checkbox"/> Yes: By the Attorney General <input checked="" type="checkbox"/> No	
(8) Briefly explain in clear and non-technical language the regulation: When the Retirement Code was amended in 1975, the Code, for the first time, permitted certain school employees to choose an alternate retirement plan. The Retirement Code applies to new employees. The Board promulgated Regulation 215.36 to implement this Code provision. This Regulation, among other things, contained a transitional provision, granting to existing employees an opportunity to elect an alternate retirement plan. This transitional provision was added because the existing employees never had the opportunity to select an alternate plan. At the time of enactment of the Regulation, the only alternate plan allowed was the Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF). Act 2001-35 allowed the State System of Higher Education (SSHE) to add insurance companies or mutual funds as additional alternate plans for its employees. The Regulation, as written, could be interpreted to allow existing employees, who already had a choice under the Retirement Code to elect an alternate retirement plan, to make an additional election and opt out of PSERS each time a new alternate plan is			

Repeal Analysis Form

approved by SSHE. The Board, however, has always interpreted the Regulation as providing a one-time opportunity for these employees, not a continual choice each time a new alternate plan is approved by the employer. Deleting the language clarifies the intent of the Board and eliminates a potential conflict between the Regulation and the Retirement Code, because the Retirement Code does not allow current members to opt out of the system.

(9) Briefly explain why this regulation is proposed for repeal:

Regulation 215.36, as written, could be interpreted to allow existing employees, who already had a choice under the Retirement Code to elect an alternate retirement plan, to make an additional election each time a new alternate plan is approved by certain employers, whose employees can choose to join PSERS, SERS or TIAA-CREF. The Board, however, has always interpreted the Regulation as providing a one-time opportunity, not a continual choice each time a new alternate plan is approved by an employer.

Deleting the language clarifies the intent of the Board and eliminates a potential conflict between the Regulation and the Retirement Code. The State Employees' Retirement System is proposing a similar revision of its regulation that parallels §215.36. This repeal will harmonize the regulations of the Public School Employees' Retirement System and State Employees' Retirement System with regard to election of alternate retirement plans.

Act 2001-35 allowed the State System of Higher Education (SSHE) to add insurance companies or mutual fund as additional alternate plans for its employees. Current employees of SSHE had the option of electing membership in TIAA-CREF, either at the time of hire or under the transitional opt out provisions, no longer in effect. Act 2001-35 is the first time that an alternate plan besides TIAA-CREF has been authorized for any employer. Therefore, eliminating the transitional provisions has not been a priority until now.

(10) Please list the proposed schedule for repeal noting any public comment periods:

PSERS will follow the standard public comment periods provided for by statute and/or regulations governing regulatory changes.

(11) State any costs and/or savings associated with the repeal:

PSERS is not writing new regulations. PSERS regulations and policies apply only to members of the system, and not to the general public. The proposed repeal will formalize the Board's long-standing interpretation that the transitional provisions of Regulation 215.36 have expired. The repeal, therefore, maintains the status quo.

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Public School Employees' Retirement System		IRRC Number:
(2) I.D. Number (Governor's Office Use)		
(3) Short Title Repeal of Transitory Provisions Relating to Alternate Retirement Plans		
(4) PA Code Cite 22 Pa.Code §§ 215.36	(5) Agency Contacts & Telephone Numbers Primary Contact: Frank Ryder, 717-720-4733 Secondary Contact: Charles K. Serine, 717-720-4679	
(6) Type of Rulemaking (check one) Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. When the Retirement Code was amended in 1975, the Code, for the first time, permitted certain school employees to choose an alternate retirement plan. The Retirement Code applies to new employees. The Board promulgated Regulation 215.36 to implement this Code provision. This Regulation, among other things, contained a transitional provision, granting to existing employees an opportunity to elect an alternate retirement plan. This transitional provision was added because the existing employees never had the opportunity to select an alternate plan. At the time of enactment of the Regulation, the only alternate plan allowed was the Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF). Act 2001-35 allowed the State System of Higher Education (SSHE) to add insurance companies or mutual funds as an additional alternate plans for its employees. The Regulation, as written, could be		

interpreted to allow existing employees, who already had a choice under the Retirement Code to elect an alternate retirement plan, to make an additional election and opt out of PSERS each time a new alternate plan is approved by SSHE. The Board, however, has always interpreted the Regulation as providing a one-time opportunity for these employees, not a continual choice each time a new alternate plan is approved by the employer. Deleting the language clarifies the intent of the Board and eliminates a potential conflict between the Regulation and the Retirement Code, because the Retirement Code does not allow current members to opt out of the system.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

24 Pa.C.S. §8502(h).

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Deleting the language clarifies the intent of the Board and eliminates a potential conflict between the Regulation and the Retirement Code. The State Employees' Retirement System is proposing a similar revision to its regulation that parallels §215.36. This repeal will harmonize the regulations of the Public School Employees' Retirement System and the State Employees' Retirement System with regard to election of alternate retirement plans. The proposed regulation will also eliminate unnecessary regulations.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are none.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

PSERS is not writing new regulations. PSERS regulations and policies apply only to members of the system, and not to the general public. By repealing the regulations, PSERS desires to remove a potential conflict between the Retirement Code and the Regulations and eliminate unnecessary regulations.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No member will be adversely affected by the repeal of these regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Regulations are being repealed and amended to eliminate expired transitional provisions.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

PSERS is not drafting new regulations, and so has not asked for the public's input.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures that may be required.

There are no costs to the Commonwealth, its citizens or school employees associated with this proposal. PSERS is not writing new regulations. The proposed repeal will formalize the Board's long-standing interpretation that the transitional provisions of Regulation 215.36 have expired. The repeal, therefore, maintains the status quo.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

There are none. Local governments will not be affected by this repeal.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures, which may be required.

The proposed repeal will formalize the Board's long-standing interpretation that the transitional provisions of Regulation 215.36 have expired. The repeal, therefore, maintains the status quo and has no associated cost to the Commonwealth, its citizens, school employers, school employees or PSERS.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated	*					
Local Government	*					
State Government	*					
Total Savings	*					
COSTS:	*					
Regulated	*					
Local Government	*					
State Government	*					
Total Costs	*					
REVENUE	*					
Regulated	*					
Local Government	*					
State Government	*					
Total Revenue Losses	*					

(20a) Explain how the cost estimates listed above were derived.

* The proposed repeal will formalize the Board's long-standing interpretation that the

transitional provisions of Regulation 215.36 have expired. The repeal, therefore, maintains the status quo and has no associated cost to the Commonwealth, its citizens, school employers, school employees or PSERS.

Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

There are none.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The proposed repeal will formalize the Board’s long-standing interpretation that the transitional provisions of Regulation 215.36 have expired. The repeal, therefore, maintains the status quo and has no associated cost to the Commonwealth, its citizens, school employers, school employees or PSERS.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

There are no alternatives.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are none.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no applicable federal pension standards because PSERS is a non-ERISA plan, and any federal pension standards are not at issue here.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulatory repeal will not put Pennsylvania at a disadvantage with other states, because the fiscal integrity of the system is not affected.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulatory repeal will only affect PSERS. SERS, which has a similar regulatory provision to §215.36, is also proposing a repeal of its regulation.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

PSERS does not plan to hold public hearings, only to have a public comment period to comply with the regulatory process. The general public will not be affected by this regulatory repeal.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports that will be required as a result of implementation, if available.

No. Repeal of the regulation will not change existing reporting, record keeping, or other paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Not applicable.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

We anticipate the repeal of the regulation to take effect immediately upon approval.

(31) Provide the schedule for continual review of the regulation.

There is no schedule because there is no new regulation, only a repeal.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATOR /
REVIEW COMMISSION

#2320

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>Public School Employees' Retirement System (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. 43-9</p> <p>DATE OF ADOPTION: _____</p> <p>BY: _____ [Signature]</p> <p>TITLE: Executive Director (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive of Independent Agencies.</p> <p>BY: _____ [Signature]</p> <p>10.25.04 DATE OF APPROVAL</p> <p>Asst. (Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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FINAL RULEMAKING
Public School Employees' Retirement Board
Title 22. Education
[22 Pa.Code Chapter 215]
Optional Alternate Retirement Plans

**Notice of Final Rulemaking
Public School Employees' Retirement Board
Public School Employees' Retirement System
(22 Pa. Code Chapter 215)
(Optional Alternate Retirement Plans)**

Preamble

The Public School Employees' Retirement Board (Board) is submitting this final-form rulemaking under 22 Pa. Code Chapter 215 (relating to optional alternate retirement plans). The amendment is to delete the transitional provisions for electing to participate in an optional alternate retirement plan contained in §215.36. The transitional provisions are no longer needed and, read broadly, may conflict with current Retirement Code provisions, because the Retirement Code does not allow current members to opt out of the system.

A. Effective Date

This amendment will go into effect upon publication in the *Pennsylvania Bulletin* as a final rulemaking.

B. 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. Information regarding submitting comments on this proposal appears in Section H of this preamble.

C. Statutory Authority

This final-form rulemaking is being made under the authority of the Public School Employees' Retirement Code, 24 Pa.C.S. §8502(h).

D. Background and Purpose

When the Retirement Code was amended in 1975, the Code, for the first time, permitted certain school employees to choose an alternate retirement plan. The Retirement Code applies to new employees. The Board promulgated Regulation 215.36 to implement this Code provision. This Regulation, among other things, contained a transitional provision, granting to existing employees an opportunity to elect an alternate retirement plan. This transitional provision was added because the existing employees never had the opportunity to select an alternate plan. At

the time of enactment of the Regulation, the only alternate plan allowed was the Teachers Insurance and Annuity Association – College Retirement Equities Fund (TIAA-CREF).

Act 2001-35 allowed the State System of Higher Education (SSHE) to add insurance companies or mutual funds as additional alternate plans for its employees. The Regulation, as written, could be interpreted to allow existing employees, who already had a choice under the Retirement Code to elect an alternate retirement plan, to make an additional election and to opt out of PSERS each time a new alternate plan is approved by SSHE. The Board, however, has always interpreted the Regulation as providing a one-time opportunity for these employees, not a continual choice each time a new alternate plan is approved by the employer. Deleting the language clarifies the intent of the Board and eliminates a potential conflict between the Regulation and the Retirement Code, because the Retirement Code does not allow current members to opt out of the system.

The State Employees' Retirement System is proposing a similar revision of its regulation that parallels §215.36. This repeal will harmonize the regulations of the Public School Employees' Retirement System and State Employees Retirement System with regard to election of alternate retirement plans. SSHE supports the amendment and repeal of these Regulations.

E. Benefits, Costs and Compliance

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

Benefits

This final-form rulemaking removes an expired transitional provision, clarifies the Board's intent regarding the election of alternate retirement plans, and eliminates a potential conflict between the Retirement Code and the Regulations.

Costs

The repeal will formalize the Board's long-standing interpretation that the transitional provisions of Regulation 215.36 have expired. The repeal, therefore, maintains the status quo and has no associated cost to the Commonwealth, its citizens, school employers, school employees or PSERS.

Compliance Costs

The proposed amendment will not impose any additional compliance costs on school employees or employers.

F. Sunset Review

Not applicable.

G. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 31, 2003, the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Education Committee and the Senate Finance Committee. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a detailed regulatory analysis form prepared by PSERS in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

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

On April 17, 2003, IRRC identified several sentences or phrases that could be deleted or reformatted to improve clarity. The Board has complied with the comments identified by IRRC.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), this final-form regulation was deemed approved by the House Education Committee on _____, 2004 and deemed approved by the Senate Finance Committee on _____, 2004. Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), the final-form rulemaking was deemed approved by IRRC effective _____, 2004.

H. Public Comments

There have been no public comments.

I. Findings

The Board finds that:

- 1) Public notice of intention to amend the regulations herein was given under 1 Pa.Code § 7.1 (relating to notice of proposed rulemaking required) by publication at 33 Pa.B. 882.

(2) The amendments to the rules and procedures herein are necessary and appropriate for the administration of the code.

J. Order

The Board, acting under the Administrative Code of 1929 and the Commonwealth Documents Law, including particularly those sections specified in the several authority sections herein specified with respect to each provision of the rules and procedures of PSRS deleted by this order, orders:

- (a) The regulations for the Board, 22 Pa. Code Chapter 215 are amended by amending sections 215.36.
- (b) The amendments 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 33 Pa.B. 882 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*.

By:

Jeffrey B. Clay, *Secretary*
Public School Employees' Retirement Board

Annex A
TITLE 22. EDUCATION

PART XIII. PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD
CHAPTER 215. ALTERNATE RETIREMENT PLANS

22 Pa Code §215.36 (2002)

Draft Amendment to Regulations

(Note: Additions are noted by bold underline; deletions are noted by bold brackets).

§ 215.36. Optional alternate retirement programs.

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

(1) **Repealed.** [Section 8301(a)(1) of the Retirement Code (relating to eligibility points for retention and reinstatement of source credits) purports to authorize the existence of an optional alternate retirement program under the responsibility of the employer.]

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

(3) **Repealed.** [When an eligible employe, who is an active member of the System, elects to participate in the optional alternate retirement program in accordance with paragraph (2), the employe may elect to withdraw the accumulated deductions from the

fund as of the date of the election; or, if the employee is eligible for vesting in accordance with the Retirement Code, the employee may elect to leave the accumulated deductions credited to account of the employee in the Fund and receive a retirement allowance from the System upon separation from employment; or, at the employee's option, upon attainment of superannuation retirement age, if later. The retirement allowance shall be based upon credited service and final average salary while a contributing member to this System only.]

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

(5) ~~[(5)]~~ **(2)** [When] **Where** an eligible employee [elects] **elected** to participate in the optional alternate retirement program in accordance with the provisions of **prior** paragraph (2) or **repealed paragraph (4) or elects to participate in the optional alternate retirement program in accordance with current paragraph (2)**, the election is final and binding so long as the employee [shall] 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, [resume making] **either make** contributions to the fund or reinstate the former credited service for which contributions had been withdrawn[, as the case may be,]. **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.

(6) **Repealed.** [For employees who elect to join the optional alternate retirement program, the contribution of the Commonwealth to the optional alternate retirement program on behalf of the employees will be no more than 1/2 of the employer normal contribution rate and accrued liability rate as determined in accordance with the provisions of section 8328(b) and (c) of the Retirement Code (relating to actuarial cost method).]

(b) Retirement Code reference: Section [8536] **8326** of the Retirement Code.

Annex A
TITLE 22. EDUCATION

PART XIII. PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD
CHAPTER 215. ALTERNATE RETIREMENT PLANS

22 Pa Code §215.36 (2002)
Draft Amendment to Regulations

§ 215.36. Optional alternate retirement programs.

(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) Repealed.

(2) Every employe 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. Employes 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 Employes' Retirement System.

(3) Repealed.

(4) Repealed.

(5) Where an eligible employe elected to participate in the optional alternate retirement program in accordance with the provisions of paragraph (2) or repealed paragraph (4) or elects to participate in the optional alternate retirement program in accordance with current paragraph (2), the election is final and binding so long as the employe remains eligible to remain in the optional alternate retirement program. When an employe later is employed in a capacity which does not qualify for membership in the optional alternate retirement program, the employe 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 employe while a member of the optional alternate retirement program will not be credited toward membership in, or retirement benefit from, this System.

(6) Repealed.

(c) Retirement Code reference: Section 8326 of the Retirement Code.



COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

Mailing Address
PO Box 125
Harrisburg PA 17108-0125

Toll-Free - 1-888-773-7748
(1-888-PSERS4U)
Local - 717-787-8540

Building Location
5 North 5th Street
Harrisburg PA

Web Address: www.psers.state.pa.us

October 26, 2004

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17108

RE: Final Rulemaking #43-9,
Repeal Regulation Pertaining to
Optional Membership

Dear Director Nyce:

I am herewith submitting a copy of the Final Rulemaking, Number 43-9, to the Independent Regulatory Review Commission, pursuant to the Regulatory Review Act of 1989. Copies have been hand-delivered this day to the offices of the Majority and Minority Chairmen of the Senate Finance Committee and the House Education Committee.

The Public School Employees' Retirement System (PSERS) requests approval for the repeal and amendment of existing regulatory language in order to clarify the intent of the PSERS Board, and eliminate a potential conflict between the Regulation and the Retirement Code. The request addresses a transitional provision that granted certain school employees an opportunity to elect participation in an alternate retirement plan, providing an exception to mandatory membership in PSERS. Statutory changes have since been enacted (Act 2001-35) that permit the regulatory language to be interpreted in a manner that is inconsistent with the intent of the PSERS Board and language of the Retirement Code.

The statutory Code governing the State Employees' Retirement System (SERS) contains similar language to that of the PSERS Code relative to optional and mandatory membership. SERS intends to file a Repeal of Regulations Pertaining to Optional Membership with the IRRC, concurrently, and for the same reasons that PSERS is pursuing its regulation change. The standing committees for SERS are the House State Government Committee and the Senate Finance Committee.

Mr. Robert E. Nyce
October 26, 2004
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We regard the concerns and questions of the Commission to be very important, and welcome the opportunity to discuss them during the Final Rulemaking process.

Please feel free to contact this office regarding the proposed regulatory changes. I may be reached at 720-4733.

Sincerely,

A handwritten signature in black ink that reads "Frank". The signature is written in a cursive, flowing style.

Frank Ryder
Director, Government Relations

Enclosure

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 43-9
 SUBJECT: Optional Alternate Retirement Plans
 AGENCY: PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM #2320

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/26	<i>M. F. C. T. U.</i>	HOUSE COMMITTEE ON EDUCATION
10/26/04	<i>Janice J. Serock</i>	
10/26/04	<i>Kristi Krelson</i>	SENATE COMMITTEE ON FINANCE
10/26/04	<i>[Signature]</i>	
10/26/04	<i>Joseph F. Allen</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)