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Repeal Analysis Form

(1) Agency

State Employees' Retirement System

(2) I.D. Number (Governor's Office Use)

(3) Short Title

Repeal of Transitional Provisions for Alternate Retirement Plans

(4) PA Code Cite

4 Pa.Code § 243.3

4 Pa.Code § 249.58

(5) Agency Contact and Telephone Number:

Sean Sanderson, 717-787-9657

Catherine Nolan, 717-783-7317

(6) Type (check one)

- Proposed Rulemaking
- Final Order Adopting Regulation
- Final Order, Proposed Rulemaking
- Omitted

(7) Is a 120 Day Emergency Certification Attached?

- Yes: By the Governor
- Yes: By the Attorney General
- No

(8) Briefly explain in clear and non-technical language the regulation:

When the Retirement Code was amended in 1974, the Retirement 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 243.3 and Regulation 249.58 to implement this Code provision. These Regulations, among other things, contained transitional provisions, granting to existing employees an opportunity to elect an alternate retirement plan. Regulation 249.58 provided that vested members make such election on or before November 1, 1975. Active members who had not vested as of November 1, 1975 had 60 days from becoming eligible to vest to so elect. The transitional provisions of both regulations were added because the existing employees never had the opportunity to select an alternate plan. At the time of enactment of the Regulations, the only alternate plan allowed was 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 Regulations, 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 the State Employees' Retirement System (SERS) each time a new alternate plan is approved by SSHE. The Board, however, has always interpreted the Regulations 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 Regulations and the Retirement Code because the

Repeal Analysis Form

Retirement Code does not allow current members to opt out of the system.

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

Regulations 243.3 and 249.48, 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 the Public School Employees' Retirement System (PSERS), SERS or TIAA-CREF. The Board, however, has always interpreted the Regulations 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. PSERS is proposing a similar revision of its regulation that parallels §249.58. This repeal will harmonize the regulations of SERS and PSERS 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 funds 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 transitional opt out provisions, no longer in effect. 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:

SERS 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:

SERS is not writing new regulations. SERS regulations and policies apply only to members of the system, and not to the general public. By deleting the transitional provisions of the regulations, SERS desires to remove a potential conflict between the Retirement Code and the Regulations.

Regulatory Analysis Form		This space for use by IRRC
(1) Agency State 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 4 Pa.Code § 243.3 4 Pa.Code § 249.58	(5) Agency Contact and Telephone Number: Sean Sanderson, 717-787-9657 Catherine Nolan, 717-783-7317	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> 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 1974, the Retirement 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 243.3 and Regulation 249.58 to implement this Code provision. These Regulations, among other things, contained transitional provisions, granting to existing employees an opportunity to elect an alternate retirement plan. Regulation 249.58 provided that vested members make such election on or before November 1, 1975. Active members who had not vested as of November 1, 1975 had 60 days from becoming eligible to vest to so elect. The transitional provisions of both regulations were added because the existing employees never had the opportunity to select an alternate plan. At the time of enactment of the Regulations, the only alternate plan allowed was 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 Regulations, 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 the State Employees' Retirement System (SERS) each time a new alternate plan is approved by SSHE. The Board, however, has always interpreted the Regulations 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 Regulations 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.

71 Pa.C.S. §5902(h).

(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 Regulations and the Retirement Code. The Public School Employees' Retirement System (PSERS) is proposing a similar revision of its regulation that parallels §249.58. These repeals will harmonize the regulations of PSERS and SERS with regard to election of alternate retirement plans. The proposed repeals and amendments 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.)

SERS is not writing new regulations. SERS regulations and policies apply only to members of the system, and not to the general public. By repealing the regulations, SERS desires to remove potential conflicts 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.

SERS 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 which may be required.

There are no costs to the Commonwealth, its citizens or school employees associated with this proposal. SERS is not writing new regulations. By repealing the regulations, SERS desires to remove a potential conflict between the Retirement Code and the Regulations and eliminate unnecessary regulations.

(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.

There are no costs to the Commonwealth, its citizens or school employees associated with this proposal. SERS is not writing new regulations. By repealing the regulations, SERS desires to remove a potential conflict between the Retirement Code and the Regulations and eliminate unnecessary regulations.

(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.

Regulatory Analysis Form

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

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

* There are no costs to the Commonwealth, its citizens, local governments or school employees associated with this proposal. SERS is not writing new regulations. By repealing the regulations, SERS desires to remove potential conflicts between the Retirement Code and the Regulations and eliminate unnecessary regulations.

(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.

There are no costs to the Commonwealth, its citizens, local governments or school employees associated with this proposal. SERS is not writing new regulations. By repealing the regulations, SERS desires to remove a potential conflict between the Retirement Code and the Regulations and eliminate unnecessary regulations.

Regulatory Analysis Form

(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 no alternatives.

(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. SERS is exempt from ERISA because it is a governmental plan. SERS is subject to provisions of the Internal Revenue Code, however, those provisions are not relevant 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 and amendment will not affect any existing or proposed regulations. PSERS, which has a regulatory provision similar to 4 Pa.Code §249.58, 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.

SERS 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 which will be required as a result of implementation, if available.

No. Repeal of the regulations 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?

SERS anticipates the repeal of the regulations 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.

CDL-1

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

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REGULATORY
REVIEW COMMISSION

2322

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

BY: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL


Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy
of a document issued, prescribed or promulgated by:

State Employees' Retirement System
(AGENCY)

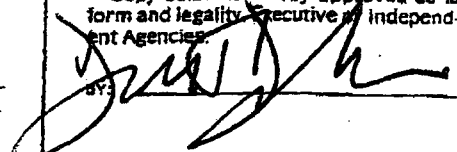
DOCUMENT/FISCAL NOTE NO. 31-2

DATE OF ADOPTION: _____

BY: 

TITLE: Executive Director
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality. Executive of Independent
Agencies

BY: 

10.25.04

DATE OF APPROVAL

EXEC. (Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney Gen-
eral approval or objection within 30
days after submission.

FINAL RULEMAKING
State Employees' Retirement Board
Title 4 Administration
[4 Pa. Code Chapter 243 and 4 Pa. Code Chapter 249]
Optional Alternate Retirement Plans

**Notice of Final Rulemaking
State Employees' Retirement Board
State Employees' Retirement System
(4 Pa. Code Chapters 243 and 249)
(Optional Alternate Retirement Plans)**

Preamble

The State Employees' Retirement Board (Board) is submitting this final-form rulemaking under 4 Pa. Code Chapter 243, Section 243.3 (relating to optional alternate retirement programs) and 4 Pa. Code Chapter 249, Section 249.58 (relating to optional alternate retirement plans). The amendments are to delete the transitional provisions for electing to participate in an optional alternate retirement program or plan contained in §243.3 and §249.58. The transitional provisions are no longer needed and, read broadly, may conflict with current Retirement Code provisions because the State Employees' Retirement Code (Retirement Code) does not allow current members to opt out of the State Employees' Retirement System (SERS).

A. Effective Date

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

B. Contact Person

For further information contact Sean Sanderson, Director of Communications, State Employees' Retirement System, 30 North Third Street, P.O. Box 1147, Harrisburg, PA 17108, 717-787-9657 or M. Catherine Nolan, Assistant Counsel, State Employees' Retirement System, 30 North Third Street, P.O. Box 1147, Harrisburg, PA 17108, 717-783-7317. 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 Retirement Code, 71 Pa.C.S. §5902(h).

D. Background and Purpose

When the Retirement Code was amended in 1974, the Retirement 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 243.3 and Regulation 249.58 to implement this Code provision. These Regulations, among other things, contained transitional provisions, granting to existing employees an opportunity to elect an alternate retirement plan. Regulation 249.58 provided that vested members make such election on or before November 1, 1975. Active members who had not vested as of November 1, 1975 had 60 days from becoming

eligible to vest to so elect. The transitional provisions of both Regulations were added because the existing employees never had the opportunity to select an alternate plan. At the time of enactment of the Regulations, the only alternate plan allowed was 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 Regulations, 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 SERS each time a new alternate plan is approved by SSHE. The Board, however, has always interpreted the Regulations 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 Regulations and the Retirement Code because the Retirement Code does not allow current members to opt out of the system.

The Public School Employees' Retirement System is proposing a similar revision of its Regulation that parallels §249.58. This repeal will harmonize the Regulations of the State Employees' Retirement System and Public School Employees' Retirement System with regard to election of alternate retirement plans. The State System of Higher Education supports the proposed amendments and repeal of these provisions.

E. Benefits, Costs and Compliance

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

Benefits

This final-form rulemaking removes expired transitional provisions, 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 would formalize the Board's long-standing interpretation that the transitional provisions of Regulation 243.3 and Regulation 249.58 have expired. The repeal, therefore, maintains the status quo, and has no associated cost.

Compliance Costs

The proposed amendment will not impose any additional compliance costs on state 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 February 3, 2003 the Board submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House State Government 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 SERS 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 the House State Government 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

SERS has received 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. 892.

(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 State Employees' Retirement Code 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 SERS modified by this order, orders:

(a) The regulations for the Board, 4 Pa. Code Chapter 243 are amended by amending section 243.3, and the regulations for the Board, 4 Pa. Code Chapter 249 are amended by amending section 249.58.

(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. 892 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:

Eric Henry, *Secretary*
State Employees' Retirement Board

Annex A
TITLE 4. ADMINISTRATION
PART X. STATE EMPLOYEES' RETIREMENT BOARD
CHAPTER 243. MEMBERSHIP, CREDITED SERVICE, CLASSES OF
SERVICE AND ELIGIBILITY FOR BENEFITS

4 Pa. Code § 243.3 (2002)

Draft Amendment to Regulation

(Note: There are no additions, and deletions are noted by bold brackets. There have been no additions or deletions since the proposed stage.)

§ 243.3. Optional alternate retirement program.

School employes, limited to certain designated employes and officers of The Pennsylvania State University, Indiana University of Pennsylvania, the State System of Higher Education and the Department of Education, shall be permitted to join an optional alternate retirement program in lieu of membership in the system. The program shall be an independent retirement program approved by the employing agency head, provided that the employer is not contributing at a rate greater than that provided in section 5508(b) of the code (relating to actuarial cost method). [Eligible employes, who are members of this System on the effective date of the code, shall have the right to elect to join an alternate retirement program and irrevocably relinquish membership in this System, under conditions to be contained in an agreement to be later approved by the respective employing agencies and the Board and to be published as an appendix to this part.]

(Note: There are no additions, and deletions are included.)

§ 243.3. Optional alternate retirement program.

School employes, limited to certain designated employes and officers of The Pennsylvania State University, Indiana University of Pennsylvania, the State System of Higher Education and the Department of Education, shall be permitted to join an optional alternate retirement program in lieu of membership in the system. The program shall be an independent retirement program approved by the employing agency head, provided that the employer is not contributing at a rate greater than that provided in section 5508(b) of the code (relating to actuarial cost method).

**TITLE 4. ADMINISTRATION
PART X. STATE EMPLOYEES' RETIREMENT BOARD
CHAPTER 249. ADMINISTRATION, FUNDS, ACCOUNTS, GENERAL PROVISIONS**

4 Pa. Code § 249.58 (2002)

Draft Amendment to Regulation

(Note: Additions to existing language are noted by bold underscoring, and capital letters indicate language added after the proposed stage; deletions are noted by bold brackets, and strikethrough type indicates deletions made after the proposed stage.)

§ 249.58. Optional Alternate Retirement Program.

Pursuant to section 5301 of the 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 section also requires that such a program be approved by the Secretary of Education or the governing body of certain State institutions, including Pennsylvania State University, as the case may be.] [~~As a consequence, the following rules and regulations 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 school employes:~~]

(1) **Repealed**. [Section 5301(a)(12) of the code authorizes the governing body of the institution, or the Secretary of Education, where he has jurisdiction, to designate who shall be eligible to participate in the optional retirement program. They shall be responsible for the establishment of and the provisions of the program.]

(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, shall have the option of continuing their active membership or of joining the optional alternate retirement program provided they shall make such election on or before November 1, 1975.] Every employe, who [subsequently becomes] **is** eligible for membership in the optional alternate retirement program, shall make such election within 30 days of the first date of active employment. All employes not exercising the option to join the optional alternate retirement program [~~as aforesaid~~] shall be deemed to have chosen to commence [or continue] active membership in the System, unless [~~he shall~~] **THEY** have elected membership in the Public School Employees' Retirement System[~~, as provided by law~~].

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

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

(5) Where an eligible employe [elects] **elects** 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 shall be final and binding so long as he shall remain eligible to remain in the optional alternate retirement program. If such an employe later becomes employed by the Commonwealth in a capacity which does not qualify him for membership in the optional alternate retirement program, he shall, upon meeting the qualifications for membership in this System, [resume making] **make** contributions to the fund, [ø] **AND IF ELIGIBLE, HE MAY** reinstate his 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 code. In no case shall service, salary, or other compensation paid to an employe while a member of the optional alternate retirement program be credited toward membership in **or retirement benefit from** this System.

(6) **Repealed.** [In the case of eligible employes who elect to join the optional alternate retirement program, the employer's contribution to the optional alternate retirement program on behalf of such employes shall be at the same rate as the employe normal contribution rate to the fund as determined in accordance with the provisions of section 5508(b) of the code (relating to actuarial cost method).]

(7) Each year, the Board will certify to the Secretary of Education or the governing bodies of employing institutions the percentage rate of the employer normal contribution as determined in accordance with section 5508(b) of the code.

(Note: Additions and deletions are included.)

§ 249.58. Optional Alternate Retirement Program.

Pursuant to section 5301 of the 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 such election within 30 days of the first date of active employment. All employes 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 Public School 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 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 shall be final and binding so long as he shall remain eligible to remain in the optional alternate retirement program. If such an employe later becomes employed by the Commonwealth in a capacity which does not qualify him for membership in the optional alternate retirement program, he shall, upon meeting the qualifications for membership in this System, make contributions to the fund, and if eligible, he may reinstate his 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 code. In no case shall service, salary, or other compensation paid to an employe while a member of the optional alternate retirement program be credited toward membership in or retirement benefit from this System.

(6) Repealed.

(7) Each year, the Board will certify to the Secretary of Education or the governing bodies of employing institutions the percentage rate of the employer normal contribution as determined in accordance with section 5508(b) of the code.

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

I.D. NUMBER: 31-2
 SUBJECT: Optional Alternate Retirement Plans
 AGENCY: STATE EMPLOYEES' RETIREMENT SYSTEM

2322

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>Eileen Kriel</i>	HOUSE COMMITTEE ON STATE GOVERNMENT
10-26	<i>Kim Suttely</i>	
10/26/04	<i>Kristi Kreiser</i>	SENATE COMMITTEE ON FINANCE
10/26	<i>Jan Kuper</i>	
10/26/04	<i>Steph J. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)