Regulatory Analysis Form

(1) Agency
Public School Employees' Retirement System

(2) I.D. Number (Governor’s Office Use)
43-10

(3) Short Title
Applicability of General Rules; Preliminary Provisions; Contributions and Benefits; General Administration

(4) PA Code Cite

(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
☒ Final Order Adopting Regulation
☐ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?
☒ No
☐ Yes: By the Attorney General
☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The title of Chapter 201 has been amended to read “Practice and Procedure” rather than “Applicability of General Rules” and was restructured and amended substantially to provide definitions and an outline of the procedure currently in practice for the Executive Staff Review Committee, Non-adjudicatory Benefit Appeals, Adjudicatory Benefit Appeals and Requests for Administrative Hearing. Chapter 211 definitions were amended or deleted. Section 211.3 was taken from section 215.35, as amended, which was then deleted. Section 213.1(b) was taken from section 215.36, as amended, which was then deleted because there is no equivalent Retirement Code provision. Section 213.3.1 has been added to reflect the Board’s interpretation of “undue hardship” for the purpose of waiver of adjustments under Section 8534(b). Section 213.46(c)(d) has been amended to reflect the current return to service provisions in the Retirement Code. Section 215.2(a) has been reserved because the issues are covered under the Right-to-Know Law. In addition to the substantive changes, there are a number of grammatical corrections and editorial changes.

(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?

Promulgation of these regulations is necessary to formalize and clarify current practices, remedy problems that have arisen and reflect issues unique to PSERS. Definitions that simply copy the Retirement Code or were outdated were deleted. Regulations that are outdated were, in some instances, moved to a more appropriate section based on content and then deleted for non-applicability. New regulations were added to provide a clear, concise understanding of the Board’s policies and procedures in accordance with the Retirement Code. The majority of the amendments to these regulations were to correct grammatical errors and editorial changes to improve readability and to provide consistency with the Retirement Code.

(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 regulations and policies apply only to members of the system and their employers, and not to the general public. By amending the regulations, PSERS desires to eliminate unnecessary regulations and clarify existing procedures and provisions of the Retirement Code.
<table>
<thead>
<tr>
<th>(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.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>This regulation will not have an adverse effect on any party.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(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.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PSERS regulations and policies apply only to members of the system and their employers. These regulations are intended to memorialize current practices and procedures and clarify provisions of the Retirement Code. These regulations will not require members or employers to comply with different policies or procedures.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>PSERS is not drafting new regulations, and so has not asked for the public’s input. The restructuring and revision of the regulations will provide clarity of the hearing procedure currently in place that was not previously available to the members of PSERS.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(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.</th>
</tr>
</thead>
<tbody>
<tr>
<td>No costs to the Commonwealth, its citizens or school employees are associated with this proposal.</td>
</tr>
</tbody>
</table>
(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.

(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.

(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.

<table>
<thead>
<tr>
<th></th>
<th>Current FY Year</th>
<th>FY +1 Year</th>
<th>FY +2 Year</th>
<th>FY +3 Year</th>
<th>FY +4 Year</th>
<th>FY +5 Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAVINGS:</td>
<td>$ NA</td>
<td>$ NA</td>
<td>$ NA</td>
<td>$ NA</td>
<td>$ NA</td>
<td>$ NA</td>
</tr>
<tr>
<td>Regulated Community</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Local Government</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>State Government</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Total Savings</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Current FY Year</th>
<th>FY +1 Year</th>
<th>FY +2 Year</th>
<th>FY +3 Year</th>
<th>FY +4 Year</th>
<th>FY +5 Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>COSTS:</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Regulated Community</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Local Government</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>State Government</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Total Costs</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Current FY Year</th>
<th>FY +1 Year</th>
<th>FY +2 Year</th>
<th>FY +3 Year</th>
<th>FY +4 Year</th>
<th>FY +5 Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>REVENUE LOSSES:</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Regulated Community</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Local Government</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>State Government</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>Total Revenue Losses</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

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

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

<table>
<thead>
<tr>
<th>Program</th>
<th>FY -3</th>
<th>FY -2</th>
<th>FY -1</th>
<th>Current FY</th>
</tr>
</thead>
<tbody>
<tr>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
</tr>
</tbody>
</table>

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

N/A

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

PSERS did not consider a nonregulatory alternative. These regulations were designed to resolve questions and avoid confusion regarding the current procedures for the Executive Staff Review Committee, Non-adjudicatory Benefit Appeal, Adjudicatory Benefit Appeal and Request for Administrative Hearing. These regulations also reflect changes to the Retirement Code to provide a clear understanding of current law and policies in PSERS’ regulations.

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

PSERS did not consider an alternative regulatory scheme.

(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.

To the extent that federal pension standards apply, PSERS’ standards are not more stringent.

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

These regulations will not put Pennsylvania at a disadvantage with other states, because the fiscal integrity of the system is not affected.
<table>
<thead>
<tr>
<th>(27)</th>
<th>Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>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 regulation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(28)</th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>These regulations will not change existing reporting, record keeping or other paperwork requirements.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(29)</th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NA</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(30)</th>
<th>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?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>These regulations will become effective upon final publication in the <em>Pennsylvania Bulletin</em>.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(31)</th>
<th>Provide the schedule for continual review of the regulation.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>PSERS will continually review the regulations to address any valid procedural or substantive concerns that may arise.</td>
</tr>
</tbody>
</table>
FINAL-FORM RULEMAKING
COMMONWEALTH OF PENNSYLVANIA

22 PA. CODE, CH. 201, 211, 213, 215
(DESCRIPTION)

Chapter 201 - Applicability of General Rules
Chapter 211 - Preliminary Provisions
Chapter 213 - Contributions and Benefits
Chapter 215 - General Administration
Notice of Final-Form Rulemaking
Public School Employees' Retirement Board
Public School Employees' Retirement System
22 Pa. Code, Part XIII, Chapters 201, 211, 213, 215

Preamble

The Public School Employees' Retirement Board (Board) is submitting this final-form rulemaking under 24 Pa.C.S. § 8502(h) to amend its Chapters 201, 211, 213 and 215 to read as set forth in Annex A.

Statutory Authority

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

Purpose

The primary purpose of this final-form rulemaking is to formalize and clarify current practices, remedy problems that have arisen and reflect issues unique to the Public School Employees' Retirement System (PSERS). A definition is deleted if it merely repeats the definition in 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code) (Retirement Code). Outdated regulations were deleted and new regulations were added to provide a clear, concise understanding of the Board's policies and procedures in accordance with the Retirement Code. In addition, editorial amendments have been made for improved readability.

Summary of Amendments

Chapter 201. Applicability of General Rules

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

Sections 201.2--201.5 are rescinded.

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

Final-form § 201.3a (relating to nonadjudicatory benefit appeal) sets out the procedure before the ESRC for a nonadjudicatory benefit appeal.
Final-form § 201.4a (relating to adjudicatory benefit appeal and request for administrative hearing) clarifies the procedure required of a claimant to file an adjudicatory benefit appeal within the prescribed time.

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

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


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

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

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

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

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

Chapter 211. Preliminary Provisions

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

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

Final-form § 211.3 (relating to construction) is moved from § 213.35 (relating to general regulations) for organizational purposes. Section 213.35 is rescinded in this final-form rulemaking.
Final-Form Regulations 43-10

Chapter 213. Contributions and Benefits

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

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

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

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

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

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

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

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

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

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

Section 213.27 (relating to payments by employers) is amended to correct grammatical errors and for clarity. Subsection (a) reduces the time for an employer to file monthly reports from 15 days to 10 days following the end of the month to comport with PSERS' current practice. An amendment has also been made to comply with 24 Pa. C.S. § 8535 that requires the employer to pay the bill issued by the Board within five business days.
Section 213.30 (relating to appropriations by the Commonwealth) is amended to correct grammatical errors.

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

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

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

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

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

Chapter 215. General Administration

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

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

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

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

Fiscal Impact

The final-form rulemaking is not expected to have significant negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.
Comment and Response Summary

No comments were received from the Committees or the public for the Board to consider in preparing this final-form regulation.

The Board received comments from IRRC on the proposed rulemaking. Those comments were reviewed and are discussed in detail as follows.

IRRC’s Comments: Section 201.2a. Definitions. - Clarity.
The definition of "nonadjudicatory benefit appeal" states in part, "the action of the ESRC will be deemed final unless a claimant files a timely adjudicatory benefit appeal from that action and seeks an administrative hearing." This portion of the definition is substantive. Substantive provisions in definitional sections are unenforceable. Moreover, this substantive rule is also expressed in section 201.4a(c). In the final-form regulation, the Board should strike the last sentence from this definition.

Response:
We have deleted the second sentence from the definition of “nonadjudicatory benefit appeal.”

IRRC’s Comments: Section 201.3a. Nonadjudicatory benefit appeal. - Reasonableness; Clarity.
Subsection (e) provides that the Executive Staff Review Committee (ESRC) will meet "as necessary to review and decide" appeals under this section; the claimant will be notified if the appeal is granted; and the claimant will be notified via a denial letter if the appeal is denied. The provision is vague and, consequently, fails to impart useful information to members of the regulated community or their representatives. What is the allowable time period for the ESRC to make a determination regarding an appeal and notify the claimant? If the appeal is granted, how will the claimant be notified? Also, must the claimant exercise his right to appeal within 30 days of the denial letter being written, or within 30 days of the denial letter being postmarked? We recommend that the Board amend this provision for clarity.

Response:
We have inserted the words “in writing” in Section 201.3a (e) after the word “will be notified” in the third line. As to the other questions raised by IRRC, we have made no changes. There is no specific allowable time for the ESRC to make a determination. In addition, the regulations continually use the term “the date of the letter,” which we believe makes clear that it is the date on the letter not the date of postmark or receipt that governs. PSERS internally has procedures in place to ensure that the date of an ESRC letter coincides with the date of the postmark.

IRRC’s Comments: Section 201.4a. Adjudicatory benefit appeal and request for administrative hearing. - Clarity.
Subsection (a) requires that the Board must receive an appeal and request for administrative hearing under this section "within 30 days after the date of the ESCR denial letter." The regulation should specify whether the 30-day time period for appeal begins on the date noted on the letter, or the date the letter is postmarked.
Response:
The same comment applies as to "the date of the letter" under Section 201.4(a).

IRRC's Comments: Section 201.7. Service and return of subpoenas. - Reasonableness; Clarity.
Subsection (a) requires a subpoenaing party to "furnish the fees promptly upon the written request of the witness after service of the subpoena." We have three concerns. First, the term "promptly" is vague. In the final-form regulation, the Board should provide a specific time period for response.

Second, the final-form regulation should address how a witness will be notified of his obligation to request fees in writing. Will the subpoenaing party be required to alert the witness to the requirement?

Third, the final sentence of subsection (a) is a run-on sentence and is unclear. The Board should revise it in the final-form regulation.

Response:
We have taken into consideration IRRC's comments, and have revised the proposed regulation in response to the comments, as follows:

201.7 Service and return of subpoenas.
   (a) Service of subpoenas will be made by any of the methods authorized by Pa. R.C.P. No. 234.2(b)(relating to Subpoena. Issuance. Service. Compliance. Fees. Prisoners.). It will not be necessary that witness fees be tendered at the time of service of the subpoena, but the subpoena shall include a notice that the witness may request in writing the payment of the witness fees provided in Pa. R.C.P. No. 234.2(c). Such written request shall be made to the party (or his or her counsel) on whose behalf the subpoena is issued. The party (or his or her counsel) on whose behalf the subpoena is issued shall remit the witness fees to the witness within 14 days after the date of the letter requesting payment of witness fees or before the date of the hearing, whichever comes first.

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

In response to the first comment, we have inserted the requirement that the party on whose behalf the subpoena is issued must remit the witness fee within 14 days of written request from the subpoenaed witness seeking the fees, or prior to the hearing, whichever comes first.

In response to the second comment, we have added the requirement that the subpoena itself contain a notice of the right of the witness to make a written request to receive the witness fees.

In response to the third comment, we have revised the referenced run-on sentence.
Finally, in order to stress the mandatory requirements of the regulation, we have substituted the word “shall” for the word “will” in the final form regulation.

**IRRC’s Comments: Section 201.11. Proposed opinion and recommendation. - Clarity.**

Subsection (c) stated, "[w]hen exceptions are filed, the Board will rule on the exceptions." This is the sole mention of exceptions in this chapter. With which entity should exceptions be filed, and within what time limitations? What information and documentation must be included with the exceptions? How long does the Board have to rule on exceptions? The final-form regulation should provide clear guidance on the substance and procedure of the exceptions process. It should also provide a definition of “exceptions” in the definitional section or a cross-reference to a definition located elsewhere.

**Response:**

The intention was to incorporate the exceptions procedure already set forth in the General Rules of Administrative Practice and Procedure (GRAPP). IRRC’s comment is well-taken and a new subsection 201.11(e) has been inserted that provides: “(e). Any party may file exceptions in accordance with 1 Pa. Code §§ 35.211 – 212.”

The cited GRAPP provisions will answer the question as to the entity with which exceptions should be filed and what information and documentation must be included. As to the question how long the Board has to rule on exceptions, the GRAPP does not address this issue and PSERS does not believe it is appropriate to impose such a requirement. The Board has authority to review recommended decisions, to table them, to require additional information and take other actions within its plenary power. It would, therefore, be inappropriate to impose a requirement that does not otherwise exist in the Retirement Code, GRAPP or other applicable law or regulations.

No change in 1 Pa. Code § 35.211 (relating to procedure to except to proposed report) and 35.213 (relating to effect of failure to except to proposed report) is intended. The regulation, however, preserves the Board’s discretion to accept, reject or supplement the opinion and recommendation of the hearing examiner, or to issue its own opinion and order, without having to “initiate” the review set forth in 1 Pa.Code § 35.226(a)(2). This provision is not intended to relieve the parties from filing exceptions to the proposed opinion and recommendation of the hearing examiner.

**IRRC’s Comments: Section 201.12. Oral argument before the Board. - Clarity.**

Subsection (a) states, "[t]he right to oral argument will be discretionary with the Board." This provision is vague and therefore provides insufficient guidance to the regulated community. The final-form regulation should include criteria the Board will consider in determining whether oral argument is necessary or appropriate in a given case.

Subsection (b) requires a party requesting oral argument in a case where exceptions have been filed to file the request for oral argument "with the exceptions." As noted in Comment 5 above, the Board should provide further detail concerning the exceptions process.
Subsection (e) provides that, following oral argument, the Board "may table the case for further consideration at its next meeting." If the Board does choose to table a case, must it decide the case at the next meeting? In other words, may the Board table the case for multiple meetings, or does it have a finite time period during which it must act?

Subsection (f) requires that, in accordance with the Board's decision in a case, the "Board's counsel will draft a proposed adjudication" that "will be presented for the Board's approval" at the Board meeting immediately following the meeting in which the Board made its determination in the case. Must the Board vote on the proposed adjudication in the meeting when it is presented, or may it table the matter for one or more meetings? Is there a time period during which the Board is required to act?

Response:
PSERS notes that section 201.12, the provision in question, supersedes 1 Pa. Code §35.214. That GRAPP provision states simply that the agency head may order oral argument, without giving any additional guidance. PSERS therefore does not believe it is necessary to add anything to this provision, but will accede to IRRC's request by amending the first sentence of section 201.12(a) to read: “The right to oral argument is discretionary with the Board and will be granted to the extent the Board believes it will be helpful in enabling the Board to acquire an understanding of and to resolve the issues.” This standard is taken from Pa. R.A.P. 2315(a) (relating to oral arguments).

The comment regarding section 201.12(b) has been addressed in the response to comment 5.

The next comment questions how long a case may be tabled. As set forth above, the Board has discretion as to when it will decide a case and can continue tabling a case if it cannot get a consensus to vote on a matter. To resolve any question, PSERS has deleted the words “at its next meeting” from section 201.12(e).

The next comment questions whether under section 201.12(f), the Board must vote on a proposed adjudication at the meeting where it is presented. The answer is no. There is no time period. To address IRRC's concerns, we have deleted the words “for the Board's approval” and have inserted the words “to the Board” in section 201.12(f).

IRRC's Comments: Section 211.2. Definitions. - Clarity.
Certified members. The final sentence of the definition of this term states, "[a]ll other members are noncertified members." The definition of "nonprofessional members" also refers to the meaning of "noncertified members" found in this definition. The final-form regulation should strike the final sentence from this definition and provide for a separate and distinct definition of "noncertified members."

Nonprofessional members. The Board should clarify the purpose and meaning of the final sentence of this definition. It is unclear whether the Board intends "noncertified members" to be included in the definition of "nonprofessional members," or whether the Board intends the terms to have the same meaning.
Pickup contributions. The Board proposes to delete the definition of "pickup contributions" currently included in this section. However, this term is used in the definition of "inactive member." The final-form regulation should either maintain this definition, provide a cross-reference to where an applicable definition of the term is found elsewhere, or delete the use of the term in the definition of "inactive member."

Professional members. The Board should clarify the purpose and meaning of the final sentence of this definition. It is unclear whether the Board intends "certified" member to be included in the definition of "professional members," or whether the Board intends the terms to have the same meaning.

School year. The final sentence of this definition is substantive. Substantive provisions in definitional sections are unenforceable. The Board should strike this sentence from the definition and relocate it to a substantive section of the final-form regulation.

Response:
Addressing the first, second and fourth comments, relating to certified members, nonprofessional members and professional members, the intention is that professional members and certified members are the same and nonprofessional members and noncertified members are the same. To clarify this, we have changed the defined words and definitions to read as follows:

*Nonprofessional members or noncertified members* — The term includes all school employees who are not "professional employees," as defined in section 1101 of the Public School Code of 1949, 24 P.S. §11-1101, and who also qualify for membership in the System under section 8301 of the Retirement Code (relating to mandatory and optional membership).

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

The third comment relates to the deletion of “pickup contributions,” a term defined in the Retirement Code and used in the definition of an “inactive member” and an “active member.” The recommendation of IRRC has been accepted, and the phrase: “, as defined in Section 8102 of the Retirement Code,” has been inserted after “pickup contributions” in the definitions for “inactive member” and “active member.”

The fifth comment relates to the definition of “school year” and states this is substantive and should be moved to a substantive section. We are moving this provision to Section 211.3(h) (relating to construction).
IRRC's Comments: Section 213.1. Mandatory and optional membership. - Clarity.
Subparagraph (b)(2) requires that the remittance of certain contributions or the reinstatement of former credited service "shall be made in accordance with the applicable provisions of the Retirement Code." The final-form regulation should specify the applicable Retirement Code provisions.

Response:
This recommendation has been adopted. The penultimate sentence now reads:
Remittance of contributions or reinstatement of former credited service shall be made in accordance with 24 Pa. C.S. §§ 8303(c) and 8323(a).

IRRC's Comments: Section 213.3a. Waiver of adjustments. - Clarity; Protection of the public welfare.
Subsection (a) provides the standard for determining whether an adjustment meets the undue hardship test under section 8303.1(a)(l) of the Retirement Code. Under Paragraph (a)(l), the undue hardship test is met if the "adjustment causes a reduction in excess of 5% of the monthly annuity or other relevant amount." How and why did the Board determine that a 5% reduction was the appropriate benchmark for "undue hardship"? What effect, if any, will this provision have on members who have already experienced an adjustment under section 8534(b) of the Retirement Code leading to a 5% reduction in monthly benefit?

Additionally, we have a clarity concern. Paragraph (a)(l) references a reduction of the monthly annuity "or other relevant amount." The final-form regulation should clarify whether "other relevant amount" modifies 5%, or whether it modifies "monthly annuity." At a minimum, the final-form regulation should provide criteria to assist the regulated community in ascertaining what might be a "relevant amount."

Response:
Section 213.45(b)(1) of the Board’s current regulations uses 5% as the difference between a finally-calculated monthly annuity and an originally-estimated monthly annuity as the significant difference that will allow an annuitant to change an otherwise irrevocable benefit payment plan election. The Board has utilized the 5% difference, by analogy, to determine undue hardship under Section 8303.1 of the Retirement Code (relating to waiver of adjustments).

In answer to what effect this provision will have, if a person seeks a waiver, under section 8303.1 of the Retirement Code, of an adjustment made by PSERS pursuant to section 8534(b) of the Retirement Code, the Board will apply this percentage to determine whether the undue hardship test under Section 8303.1(a)(l) (one of the four tests that must be met) has been met. We have already been applying this standard as a policy and are now seeking to make it a regulation to gain added legal support.

With respect to the second paragraph, we note IRRC’s concern, and since any adjustment will ultimately impact the annuity, we have changed Section 213.3.1(a)(1) to read:
(1) the adjustment causes a reduction in excess of five percent of the monthly annuity;
IRRC's Comments: Section 213.25. Incomplete payments. - Clarity; Protection of the public welfare.

Subsection (c) provides that if a member applies for the purchase of service and dies prior to certification by the Board, "purchase of service shall be completed...by reducing the annuity benefit by the actuarial equivalent of the debt...provided, in the case of nonschool service, the purchase does not negatively impact the present value." We have two concerns.

First, the regulation currently states that if a member dies after applying for the purchase of service but before certification by the Board, "the members legally constituted representative may purchase the service by payment of a lump sum" or by reducing the annuity benefit. (Emphasis added.) Will the change from permissive to mandatory language prevent a deceased member's legally constituted representative from opting out of the transaction?

Second, while section 213.24 allows members to purchase creditable school service as well as nonschool service, this amendment only protects against a purchase of nonschool service that would negatively impact the present value. Why does the final clause not address the purchase creditable school service that would negatively affect the present value?

The preamble does not provide a clear explanation of the reason for either of these changes. In the submittal of the final-form regulation, the Board should further explain the amendments to this section.

Response:
In answer to the first concern, the intent was to prevent a member's legally constituted representative from opting out of a non-school purchase transaction unless the transaction has a negative impact on present value. The current regulation already is mandatory as to school service, as provided in section 8325 of the Retirement Code. The existing permissive language relates only to how the representative may purchase the service.

Regarding the second concern, we have amended the preamble to read:

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

IRRC’s Comments: Section 213.27. Payments by employers. - Clarity; Reasonableness.

This section reduces the time period for employers to file reports with the Board and to pay the amount billed by the Board. The preamble does not provide a clear explanation of the reason for the reduction of the time period or whether the time period is reasonable. In the submittal of the final-form regulation, the Board should further explain the amendments to this section.

Response:
The time in which to file reports with the Board is not statutorily mandated; however, PSERS' current standard practice requires that the reports to be filed within 10 days instead of 15 days because PSERS' computer system in place allows the employers to streamline the process of...
reporting. The employers have consistently been filing their reports within 10 days without delay or problems. The Board is merely seeking to solidify the current practice.

Section 8535, which was added to the Retirement Code in 1994, requires school entities to make payment for the employer's liability within five days after receipt of the Commonwealth's portion. The Board has already been applying this statutory requirement and is now updating the regulations.

**IRRC's Comments: Section 213.46. Termination of annuities. - Clarity.**

Subsection (d) includes a definition of "extracurricular position." We recommend that the Board move this definition from this section to section 211.2. Moreover, the definition of "extracurricular position" references an "established academic course structure." The final-form regulation should specify criteria for what the "established academic course structure" includes. For instance, does it include fine arts electives?

**Response:**

The definition of "extracurricular position" under subsection (d) questioned by IRRC is taken from the definition in Section 8346(b.1) of the Retirement Code. The Board does not believe it is advisable, nor is it prepared, to develop specific criteria for this definition at this time, but will rather consider each case individually on its own merits to develop a consistent interpretation.

In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees and the public.

**Additional Amendments:**

In addition to the previous amendments, the Board made some additional revisions.

The definition of "beneficiary" in Section 211.2 is amended to read as follows:

Beneficiary – The person (as defined in the Statutory Construction Act, 1 Pa. C.S. §1991) last designated by a member in writing to the Board to receive accumulated deductions or a lump sum benefit upon the member’s death.

In reviewing IRRC’s comments to Section 201.11, we noticed that the proposed regulation also supplements 1 Pa.Code § 35.226(a)(2) (relating to final orders). We have added this cross-reference to the final-form regulation in Section 201.11(d).

**Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 6, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 3423 (July 21, 2007) and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Education Committee and the Senate Finance Committee for review and comment. A copy of this material is available to the public upon request.
Final-Form Regulations 43-10

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on ________________, the final-form rulemaking was deemed approved by the House and Senate Committees.

Under section 5.1(e) of the Regulatory Review Act, IRRC met on ________________, and approved the final-form rulemaking.

Effective Date

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

Contact Person

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

Findings

The Board finds that:

(1) Public notice of intention to adopt these chapters 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) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

Order

The Board, acting under 24 Pa.C.S. 8502(h) and the Commonwealth Documents Law, orders that:

(a) The regulations of the Board, 22 Pa. Code, are amended to read as set forth in Annex A.
(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 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.

By:

Jeffrey B. Clay, Secretary
Public School Employees' Retirement System
§ 201.1. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), [are] is applicable to the activities of and proceedings before the Board, except as provided in, or inconsistent with, this chapter.

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

[When the claimant and System agree that no facts are in dispute, they may agree to submit the case directly to the Board for adjudication. Under these circumstances, only the claimant will file a brief in support of claimant's position. The Board will issue a proposed adjudication, to which the claimant may file exceptions. If no exceptions are timely filed, the Board will issue a final adjudication adopting the proposed adjudication. If exceptions are filed, the Board will consider the exceptions when rendering its final adjudication.]

§ 201.2a. Definitions.

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

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

Board--The Public School Employees' Retirement Board.

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

Executive Director--The appointed executive director of the System. The Executive Director of the System is also the Secretary of the Board.
ESRC--The Executive Staff Review Committee, which consists of the Executive Director and additional senior staff members as appointed by the Executive Director.

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

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

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


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

Subordinate officer--

(i) An officer or employee of the System.

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

System--The Public School Employees' Retirement System.

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

§ 201.3. [Motions practice] (Reserved).

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

(b) Summary judgment. The System or the claimant may file a motion for summary judgment directly with the Board. The motion shall conform to Pa.R.C.P. Nos. 1035.1–1035.4.]

§ 201.3a. Nonadjudicatory benefit appeal.

(a) Benefit appeals from actions of subordinate officers of the System shall be made to the ESRC and shall be nonadjudicatory.
(b) A letter from the System taking an action or making a determination on behalf of the System shall constitute action of a subordinate officer. A letter shall constitute action of a subordinate officer whether or not the letter states that an appeal must be taken within 30 days.

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

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

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

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

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

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

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

[Whenever a claimant fails to appear, either in person or through counsel, for a scheduled hearing without good cause, the hearing examiner will issue a recommendation to dismiss the case, without considering the merits of the claim.]

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

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

Appeal Docket Administrator
Public School Employees' Retirement Board
P. O. Box 125
Harrisburg, PA 17108-0125

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

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

§ 201.5. [Letter briefs] (Reserved).

[Both the claimant and the System shall be entitled to file letter briefs to the hearing examiner. The letter briefs need not conform to 1 Pa. Code §§ 35.191 and 35.192 (relating to proceedings in which briefs are to be filed; and context and form of briefs), but the letter briefs may not be more than 3 pages in length.]

§ 201.5a. Authorization of Secretary of the Board.

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

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

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

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

§ 201.6. Motions practice.

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

(b) Summary judgment. The System or the claimant may file a motion for summary judgment directly with the Board. The motion must conform to Pa.R.C.P. Nos. 1035.1–1035.5.
(c) The Board will rule directly on preliminary objections or motions for summary judgment unless, by order, it delegates the matter to a hearing examiner to prepare a proposed opinion and recommendation under § 201.12 (relating to oral argument before the Board).

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

§ 201.7. Service and return of subpoenas.

(a) Service of subpoenas will be made by any of the methods authorized by Pa.R.C.P. No. 234.2(b) (relating to Subpoena. Issuance. Service. Compliance. Fees. Prisoners.). It will not be necessary that witness fees be tendered at the time of service of the subpoena, but the [party on whose behalf the subpoena is issued shall furnish the fees promptly upon the written request of the witness after service of the subpoena.] subpoena shall include a notice that the witness may request in writing the payment of the witness fees provided in Pa. R.C.P. No. 234.2(c). Such written request shall be made to the party (or his or her counsel) on whose behalf the subpoena is issued. The party (or his or her counsel) on whose behalf the subpoena is issued shall remit the witness fees to the witness within 14 days after the date of the letter requesting payment of witness fees or before the date of the hearing, whichever comes first.

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

§ 201.8. Dismissal for nonappearance.

(a) Whenever a claimant fails to appear, either in person or through counsel, for a scheduled hearing without good cause, the hearing examiner will issue a recommendation to dismiss the case, without considering the merits of the claim.

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

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

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

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

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

(b) Both the claimant and the System shall be entitled to file letter briefs to the hearing examiner. The letter briefs need not conform to 1 Pa. Code §§ 35.191 and 35.192 (relating to proceedings in which briefs are to be filed; and content and form of briefs), but the letter briefs may not be more than 3 pages in length.

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

§ 201.11. Proposed opinion and recommendation.

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

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

(c) The Board may adopt or reject, in whole or in part, or supplement the proposed opinion and recommendation or issue its own opinion and order, whether or not exceptions to the proposed opinion and recommendation are filed by any party. When exceptions are filed, the Board will rule on the exceptions.
Final-Form Regulations 43-10

(d) [This section supplements 1 Pa. Code §§ 35.202 and 35.207 (relating to proceedings in which proposed reports are prepared; and service of proposed reports).] Any party may file exceptions in accordance with 1 Pa. Code §§ 35.211 - 212.

(e) This section supplements 1 Pa. Code §§ 35.202, 35.207, and 35.226(a)(2) (relating to proceedings in which proposed reports are prepared; service of proposed reports; and relating to final orders).

§ 201.12. Oral argument before the Board.

(a) The right to oral argument [will be] is discretionary with the Board and will be granted to the extent the board believes it will be helpful in enabling the board to acquire an understanding of and to resolve the issues. When oral argument is granted, the Secretary of the Board will schedule the argument for the next available Board meeting.

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

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

(d) Oral argument will be limited to a maximum of 10 minutes for each party, unless otherwise directed by the Board. The claimant, as the party with the burden of proof, shall argue first. If there are more than two parties to the appeal, the Secretary of the Board will establish the order of argument consistent with who has the burden of proof. New evidence will not be accepted at the oral argument.

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

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

(g) This section supersedes 1 Pa. Code § 35.214 and 35.226(a)(2) (relating to oral argument on exceptions and relating to final orders).
CHAPTER 211. PRELIMINARY PROVISIONS

§ 211.1. Short title of part.

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

* * * * *

§ 211.2. Definitions.

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

(b) The following words and terms, when used in this part, have, consistent with the Retirement Code definitions, the following meanings, unless the context clearly indicates otherwise:

[Accumulated deductions—The total of pickup contributions paid into the Fund by the member, on account of previous school service, current school service, or creditable nonschool service, as well as the statutory interest credited on all contributions.]

Active member—

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

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

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

* * * * *
Final-Form Regulations 43-10

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

Beneficiary—The person, (AS DEFINED IN THE STATUTORY CONSTRUCTION ACT, 1 PA. C.S. §1991), estate, trust, or licensed charitable organization or entity last designated by a member in writing to the Board [on forms supplied by the Board] to receive accumulated deductions or a lump sum benefit upon the member's death.

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

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

Compensation—Pickup contributions plus any remuneration received as a school employe, excluding a bonus, severance payment or other remuneration or similar emoluments received by a school employe during school service not based on the standard salary schedule for which the employe is rendering service. The term excludes payments for unused sick leave, unused vacation leave, bonuses for attending school seminars and conventions, special payments for health and welfare plans based on the hours employed or any other payment or similar emoluments which may be negotiated in a collective bargaining agreement for the express purpose of enhancing the compensation factor for retirement benefits.

Date of termination of service—The last day of service for which pickup contributions are made for an active member, or in the case of an inactive member, the date of resignation or the date the employer formally discontinues employment or 2 years following the last date of service for which contributions were made, whichever is earliest.

Effective date of retirement—The first day following date of termination of service, if application for an annuity is timely filed, but if not timely filed, the date of actual filing or date specified on the application, whichever is later. In the case of a vestee, it shall mean the attainment of superannuation age, if filed within 90 days thereof, otherwise the date of actual filing or the date specified on the application, whichever is later, and, in the case of a disability benefit, the date certified by the Board as the effective date of disability.]

Employer—

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

(ii) The term includes all governmental entities whose [employees] employees under prior law and regulations are members of the System as of the effective date of the Retirement Code.
Final average salary—The highest average compensation received as an active member during any three nonoverlapping periods of 12 consecutive months. In the case of a part-time employee, compensation shall be annualized by multiplying actual earnings by the reciprocal of the fractional portion of time worked during nonoverlapping periods of 12 consecutive months or equivalent consecutive pay periods during which compensation is received; and, in the case of a member with multiple service credit, the salary shall be determined by reference to include compensation received as a school employee or a State employee, or both. In the case of a member who first became a member on or after July 1, 1996, compensation shall be subject to the application of section 8325.1 of the Retirement Code (relating to annual compensation limit under IRC § 401(a)(17)). Final average salary is an average of the 3 highest school years. For terminations before the end of the school year, salary for that part of the year may be used in combination with a proportionate percentage of a prior year. School years with part-time service may be annualized for salary calculation. Either annualized or actual retirement-covered compensation is allocated to months for each school year. For final average salary purposes, retirement-covered compensation is credited in the school year in which it is earned, not paid. Retirement-covered compensation is not recognized for any period of nontime covered by a member.

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

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

Full time employee—An employee employed at least 5 hours per day or 25 hours per week or its equivalent.

* * * * *

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

* * * * *

Inactive member—

(i) A member for whom no pickup contributions, as defined in section 8102 of the Retirement Code, are being made, who has accumulated deductions standing to the member's credit in the Fund and for whom no pickup contributions have been made within the last 2 school years [or a multiple service member who is active in the System], except in the case of an active member for whom the contributions otherwise required for current school service are not being made solely by reason of any provision in the Retirement Code.
relating to the limitations under sections 401(a)(17) of the Internal Revenue Code, who has accumulated deductions standing to his credit in the Fund and for whom contributions have been made within the last 2 school years or a multiple service member who is active in the State Employees' Retirement System.

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

* * * * *

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

* * * * *

NONCERTIFIED MEMBERS—SEE DEFINITION OF "NONPROFESSIONAL MEMBERS."

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

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

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

* * * * *


* * * * *

School [employee] employee--
(i) A person engaged in work relating to a public school for any governmental entity and for which work the person is receiving regular remuneration as an officer, administrator or [employee] employee excluding, however, any independent contractor or a person compensated on a fee basis.

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

School year--The 12-month period which the governmental entity uses for purposes of administration, regardless of the actual time during which a member renders service. A member will not be credited, during a school year, with credited service in excess of 1 year. For the purpose of the Retirement Code, the school year commences on July 1 and ends on June 30 of the following year.

* * * * *

Superannuation or normal retirement age--

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

System--The Public School Employes' Retirement System.

Vestee--A member with ten or more eligibility points who has terminated school service, left accumulated deductions in the fund, and is deferring the filing of an application for receipt of an annuity.]

* * * * *

§ 211.3. Construction.

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

(b) The rights of members of Class T-B, as provided in section 301(2)(c) and (d) of the Public School Employees' Retirement Code of 1959 (24 P. S. § 3301(2)(c) and (d) (repealed)) shall continue.
(c) The provisions relating to former teachers as provided in sections 303(3) and 407(1) of the Public School Employees' Retirement Code of 1959 (24 P. S. §§ 3303(3) and 3407(1) (repealed)), shall continue.

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

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

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

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

(h) THE PROVISIONS RELATING TO ELIGIBILITY FOR DISABILITY ANNUITIES, SHALL BE EFFECTIVE, AS APPLIED TO ALL ACTIVE OR INACTIVE MEMBERS, FROM DECEMBER 1, 1974.

CHAPTER 213. CONTRIBUTIONS AND BENEFITS

GENERAL PROVISIONS

§ 213.1. Mandatory and optional membership.

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

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

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

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

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

(ii) From and after July 1, 1975, an [employee] employee entering school service shall be required to join the System until termination of service, although the program in which he is employed is financed, in whole or in part, by the Federal government.

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

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

(2) When an eligible employee has elected to participate in the optional alternate retirement program in accordance with paragraph (2) of former § 215.36, as it existed on April 15, 2005, or paragraph (4) of former § 215.36, as it existed on April 15, 2005, or elects to participate in the optional alternate retirement program in accordance with paragraph (1), the election is final and binding so long as the employee remains eligible to remain in the optional alternate retirement program. When an employee later is employed in a capacity which does not qualify for membership in the optional alternate retirement program, the employee shall, upon meeting the qualifications for membership in the system, either make contributions to the fund or reinstate the former credited service for which contributions had been withdrawn. Remittance of contributions or reinstatement of former credited service shall be made in accordance with the applicable provisions of the Retirement Code SECTIONS 8303(C) AND 8323(A) OF THE RETIREMENT CODE. Service, salary or other compensation paid to an employee while a member of the optional alternate retirement program will not be credited toward membership in, or retirement benefit from, this System.

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

§ 213.2. Credited school service.
(a) *Computation.* For the purposes of computing credited school service, the following conditions *shall* apply:

(1) A full-time salaried *employee* shall receive 1 year of credited service for each nonoverlapping period of 12 consecutive employable months for which the *employee* contributes for at least 180 full-day sessions of employment. A full-time salaried *employee* is not eligible to earn more than 1 year of credited service during 12 consecutive months although the *employee* may be employed for full-day sessions or for hours in excess of the limitations set forth in this section.

(2) A part-time salaried *employee*, that is, one who is compensated as a percentage of annual salary, shall receive credited service based on the proportion of full-time service for which the *employee* is employed during a school year.

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

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

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

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

(b) *Approved leaves of absence.* Credited service *shall* be granted to an active member for an approved leave of absence as authorized under sections 8102 and 8302 of the Retirement Code (relating to definitions; and credited school service). Members may be granted other types of leaves of absence, not authorized by the Retirement Code, but the leaves will not entitle the member to any credited service, during the period of the leave. Credited service for the approved leaves of absence *shall* be granted under the following conditions only:

* * * * *

(2) Proper *current* contributions, based on the salary *as if* the member *would have received* had the member been in regular full-time employment *with the employer* during the period of the leave are made by the member and by the employer if required. An employer may not be permitted to suspend the requirement of making its required contributions during the period of the leave. *Current contributions* contributions made by the member during the
period of the leave shall be transmitted through the school district on a monthly basis in the same manner as active members.

* * * * *

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

* * * * *

(b) Every active member or multiple service member who is active in the State [Employes'] Employees' Retirement System, on or subsequent to March 1, 1974, may purchase credit upon which eligibility points shall be applied, as a member of Class T-C for any periods of previous school service or permissible creditable nonschool service, as provided in this part, on the condition that the member pay for the service as provided in this part. An active member or multiple service member seeking to reinstate previous service shall be required to purchase and pay for all the service previously credited. The member is not permitted to purchase only a portion of previously credited service to be reinstated.

* * * * *

§ 213.3a. Waiver of adjustments.

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

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

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

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

§ 213.4. Creditable nonschool service.

(a) Creditable nonschool service may be purchased only by an active member or a multiple service active member of the State [Employes'] Employees' Retirement System.

* * * * *

(h) Previous nonschool service as a nurse in the employ of a county may be purchased by an active member as follows: For every 3 years or major fraction thereof in previous work
experience, an individual may buy 1 year of creditable service, not to exceed a total of 5 years. [The purchase of this service shall begin within 3 years of the employee's eligibility to purchase this creditable service.]

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

(j) The total credit of nonschool service, identified in subsections (a)–(i) may not exceed the actual number of years of school service in the System, rendered within this Commonwealth, plus, in the case of an active multiple service member, additional years of State service rendered the Commonwealth and credited in the State [Employees'] Employees' Retirement System. This limitation on total permissible nonschool service credit does not apply to the service provided in subsection (i).

* * * * *

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

[(a) Members of Class T-B or T-A may, at any time prior to retirement, elect to convert the membership into Class T-C, provided they make the appropriate contributions as a member of this latter class. Any member of Class T-B or Class T-A may elect to become a full coverage member or elect to purchase credit for previous school or nonschool service provided the member converts the membership to Class T-C and makes the appropriate contributions.

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

§ 213.6. Eligibility points.

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

* * * * *

§ 213.9. Eligibility for death benefits.

(a) In the event of the death of a member, the member's beneficiary, or estate shall be entitled to death benefits if the member was eligible for an annuity in accordance with section 8307(a) or
(b) of the Retirement Code (relating to eligibility for annuities). If the deceased member is not eligible for an annuity, the member's beneficiary or estate shall only be entitled to receive the accumulated deductions standing to the member's credit in the Fund. The Board may pay the next of kin, in the absence of a beneficiary, under the special circumstances provided in 20 Pa.C.S. § 3101 (relating to [payment of wages, salary, vacation benefits] payments to family and funeral directors).

* * * * *

CONTRIBUTIONS

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

[(a) An active member may purchase previous school service, sabbatical leave service, activated military service and full coverage membership. A State employee and a member of the State Employes' Retirement System may, if the member elects multiple service, apply for and receive credit for total previous school service, if the service is certified by the Board and the member makes the required member contributions for the purchase of the service, regardless of the amount of school service previously credited, if any.

(b) Active members wishing to convert from either Class T-B or Class T-A membership to Class T-C shall pay an amount equal to the additional contributions, if any, which would have been made together with statutory interest thereon during all periods of subsequent school and State service up to the date of purchase, from and after July 1, 1950, in the case of members of Class T-B, and from and after July 1, 1967, in the case of members of Class T-A.

(c) Active members desiring to purchase credit for an approved leave of absence, other than sabbatical and activated military service leave, shall make contributions sufficient to transfer membership to Class T-C, and to provide an annuity as a member of the class for the additional credited service, if the amount which shall be paid is the sum of the amount required in subsection (b), depending upon the class from which the transfer is made, and the amount determined as the sum of the member's basic contribution rate and normal contribution rate as provided in section 8328 of the Retirement Code (relating to actuarial cost method), during the period, multiplied by the compensation which was or would have been received during the period, together with statutory interest during all subsequent periods of school and State service up to the date of purchase.

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

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

(a) Source of contributions. As provided in sections 8303 and 8304 of the Retirement Code (relating to eligibility points for retention and reinstatement of service credits; and creditable
nonschool service), creditable school and nonschool service shall be purchased entirely by the
member, except in the following cases:

(1) In the case of former uncredited school service, when [a school district] an employer has
failed to credit service through administrative error, [the employing school district, as] the
employer[,] is required to pay its share of the contributions for the service, although the active
member is responsible for the member's share.

(3) Except for sabbatical leaves of absence, in the case of approved leaves of absence, the
employee is required to pay for the purchase of creditable nonschool service, both the
member's share and the employer's share if it is purchased after the leave of absence has expired.
If the employer reports the leaves currently based on the employee's salary as if the
employee had been in full-time employment during the leave period, the employee is only required to pay the employee share, whereupon the employer has a
corresponding liability based on normal contribution rate.

(b) Contributions for purchase of nonintervening military service. The amount due for the
purchase of nonintervening military service shall be calculated as follows: The average of the
first 3 years' salaries subsequent to the military service, multiplied by the sum of the member's
basic contribution rate and the normal contribution rate as determined by section 8328 of the
Retirement Code (relating to actuarial cost method), relating to Commonwealth and district
shares, and multiplied by the number of years or fractional years of military service. All amounts
certified by the Board for the purchase of the service shall be in accordance with methods
approved by the actuary. Nonintervening military service may not be purchased unless the active
member has received at least 3 years of salary and completed at least 3 years of subsequent
credited school service as either a Class T-C or Class T-D member.

§ 213.25. Incomplete payments.

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

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

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

*BENEFITS*

§ 213.41. Return of accumulated deductions.

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

*b * * * *

§ 213.44. Disability annuities.

(a) [A] An active or inactive member with at least 5[, but less than 10] years of credited school service shall be eligible, upon submitting appropriate medical evidence, to a disability annuity, but may not be entitled to elect any option on any portion of the disability annuity. A member entitled to a disability annuity, having [ten] five or more eligibility points, is entitled to select a joint and survivor option on that portion of the annuity to which the member is otherwise entitled.
(b) A disability annuitant no longer entitled to disability annuity in accordance with section 8505(c)(2) or 8508(b) or (c) of the Retirement Code (relating to duties of board regarding applications and elections of members; and rights and duties of annuitants), is entitled to either file an application for the election of optional modification of the annuity to which the annuitant would be otherwise entitled in accordance with section 8342 of the Retirement Code (relating to maximum single life annuity) or vest the benefit, if the annuitant has at least [ten] five or more eligibility points. If a disability annuity ceases and the member does not return to school service, the member is, if the member has not already received on account of the member's annuity the amount of the accumulated deductions, entitled to the difference upon application.

(c) Payments on account of disability shall be reduced by that amount by which the earned income of the annuitant, as reported in accordance with section 8505(b) of the Retirement Code [(relating to rights and duties of annuitants)], for the preceding year together with the disability annuity payments for the year, exceeds the greater of $5,000 or the last year's salary of the annuitant as a school [employee, if] employee, provided, the annuitant will not receive less than his member's annuity or the amount to which the annuitant may be entitled under section 8342 of the Retirement Code [(relating to maximum single life annuity)] whichever is greater.

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

§ 213.45. Change in benefit payment plan.

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

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

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

* * * * *

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

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

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

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

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

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

(ii) Actuarial reduction.]

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

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

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

§ 213.46. Termination of annuities.
(b) *Entering State service.* An annuity payable under the Retirement Code shall also cease if the annuitant enters State service and elects multiple service membership within [30] 365 days thereafter, which shall cover all periods of subsequent State service until there is a discontinuance thereof. An annuitant entering State service, who has failed to elect multiple service membership within [30] 365 days thereafter, is not eligible to elect the membership.

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

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

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

[(e) ] (f) * * * *

§ 213.47. Death benefits.

(a) If a beneficiary is not designated, or if a designated beneficiary predeceases the member or fails to survive [to receive any of the death benefits provided in section 8347 of the
Retirement Code (relating to death benefits), the member by 30 days, the benefits shall be payable to the estate of the member, or to the next of kin, 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors), as the case may be.

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

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

§ 213.49. Payment of benefits.

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

* * * * *

CHAPTER 215. GENERAL ADMINISTRATION

GENERAL PROVISIONS

§ 215.2. Administrative duties of the Board.

(a) [The minutes and other supporting records of Board meetings will be available for public inspection at the offices of the Board during normal working hours. No other records of the Board will be available for inspection by the public except upon specific approval by the Secretary of the Board.

(b) The Board will furnish, to the extent required by Federal law, information to members concerning those provisions of the Internal Revenue Code which may impose a tax liability upon a member or beneficiary. The sole responsibility for the tax liability, including the tax computation, is imposed upon the member and not the Board and the member should consult tax counsel or legal counsel for advice in these matters since the Board is not qualified or required to offer advice.
[(g)] (f) The Board will credit to the account of each member all amounts paid by the member into the fund, including the member's contributions for current service, payroll deductions for the purchase of service as otherwise provided in this part or lump sum payments for the purchase of service. A person or governmental employer may not make payments on behalf of the member unless authorized by the Retirement Code or this part. Member contributions shall be credited with statutory interest until the date of termination of service, except in the case of the vestee. In that event, statutory interest shall be credited until the effective date of retirement or until a return of the accumulated deductions, if the member so elects. In the case of a multiple service member, interest shall be credited to the member's accounts in each system until a termination of State [or] and school service.

[(h)] (g) *

§ 215.5. Duties of the Board.

(a) Application, elections and disability annuities. Duties of the Board regarding applications and elections of members and disability annuities include the following:

(1) Subsequent to the receipt of an application for a disability annuity based on physical and mental incapacity for the performance of a job for which the member is employed, the Board will, through its chief medical examiner, and other medical examiners it may engage, cause the applicant to be examined. On the basis of the medical evidence submitted, a recommendation shall be submitted to the Board stating whether a disability should be granted, together with a report as to the permanency of the disability or the need for periodic examinations as well as the time interval for the examinations. The Board will also establish an effective date of disability which shall be the day following the last day of compensation [or the day the application is filed, whichever is later].

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

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

(2) If the Board receives notification from an insurance carrier approved by the Board that an annuitant [who has attained age 65,] has elected appropriate hospitalization insurance coverage, the Board will deduct from the annuity payments the appropriate monthly installment and forward the deduction to the particular insurance carrier at [such] times as the Board and carrier mutually agree.
(3) In cases of doubt, the Board will determine whether any person is a school employee within the meaning of the Retirement Code. It may also determine whether a person is an independent contractor or a person compensated on a fee basis upon review of all the circumstances surrounding the employment of the person seeking membership in the program.

* * * * *

§ 215.6. Duties of employers.

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

1. Salaried employees. Reporting procedures for salaried employees must comply with the following:

   (i) Part time salaried employees, irrespective of the percentage of time employed, shall be reported based on the percentage of time employed, as it relates to full time salaried employees. If requested, the employer shall furnish, under section 508 of the Public School Code of 1949 (24 P. S. § 5-508), minutes of board meetings indicating the conditions of employment of the individuals.

   (ii) This procedure does not affect the enrollment of salaried employees who are currently members of the System. The member's purchase of the previous part time salaried service in the 1975-76 school year shall be either a lump sum payment or a method agreed upon by the System and the member without application of interest.

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

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

   (ii) If an employee is enrolled as a member at the beginning of the fiscal school year, or when employed, and does not qualify during that fiscal school year, the employee is then entitled to a refund of accumulated deductions. If an employee is not enrolled at the beginning of the fiscal school year, or date of employment, but qualifies during the fiscal school year, the school district employer shall make deductions from that time forward and the employee and employer shall be billed for the first 500 hours or 80 days [without application of interest].
(b) Annuitants employed in an emergency. The employer shall, upon the reemployment of an annuitant from the State Employes' Retirement System who has elected multiple service or this System, in an emergency, notify the Board of commencement and termination of the employment to insure that the 95-day period for a continued receipt of the annuity is not exceeded. If that limitation is exceeded in a school year, the employer shall reenroll the annuitant from the 96th day of employment as an active member of the System, whereupon an annuity adjustment shall be made, as the case may warrant.

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

§ 215.7. Rights and duties of school employees and members.

(a) Information on new employees. Each new school employee shall provide the employer with a complete record of previous school or State service, or creditable nonschool service, proof of date of birth, in the order of preference set forth in subsection (b), home address, current status in the System and other information the Board may require. Willful failure to provide the information required by this subsection, or furnishing of erroneous information upon entrance into the System shall result in the forfeiture of the right of the member to subsequently assert any right to benefits based on the erroneous information or on any of the required information which the member failed to provide, intentionally or otherwise. If the Board finds that a member is receiving an annuity based on false, misleading or improper information, the additional amounts received predicated on the information together with statutory interest doubled and compounded shall be deducted from the present value of any remaining benefits to which the member is legally entitled and the remaining benefits shall be correspondingly decreased.

* * * * *

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

(d) Beneficiaries. Every member shall nominate a beneficiary and, if desired, a contingent beneficiary, [if desired, on a form to be filed] in writing with the Board [and supplied by the Board]. In all these cases, the designated or contingent beneficiary, as the case may be, shall be the only one entitled to receive the accumulated deductions or the death benefit for those who die in service or those who would be entitled to a benefit under Option 1 under section 8345 of the Retirement Code (relating to member's options). If the beneficiary or designated contingent beneficiary fails to survive the member, the payment, subject to the limitation in 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) shall be paid to the next of kin. If the applicable limitation cannot be met, the payment, in the absence of a designated beneficiary, shall be paid to the estate upon the submission of documents required by the Board to authorize payment.
(f) Rights of vestees. A vestee may, subsequent to vesting, and at any time during the vesting period, withdraw the accumulated deductions, thereby forfeiting other benefits to which the vestee would be otherwise entitled, or apply for an annuity, if the vestee has at least ten five eligibility points. The vestee shall also nominate a beneficiary to receive the vested benefits should the vestee fail to survive the receipt of the benefit.

(g) Right of vestee at superannuation age. For a vestee to be entitled to, and receive, an annuity, effective the date the vestee attains superannuation age, the vestee shall file an application no later than 90 days thereafter. An application subsequently filed shall be effective upon the date filed. If a vestee dies within the 90-day period subsequent to superannuation age, not having filed an application for benefits, the vestee shall be deemed to have elected the automatic death benefit Option 1. [If the vestee fails to do anything within 7 years subsequent to superannuation age, the vestee shall be deemed to have elected to receive the accumulated deductions and shall, upon application, be entitled to receipt of the deductions, thereby forfeiting any other benefit.]

(h) Nomination of beneficiary or survivor annuitant. A member in receipt of a reduced annuity, under any of the options, shall have the following rights with regard to designation of a beneficiary or survivor annuitant:

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

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

MISCELLANEOUS PROVISIONS

§ 215.33. Taxation, attachment and assignment of funds.

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

§ 215.35. [General regulations] (Reserved).

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

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

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

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

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

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

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

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

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

[(a) Under section 8301(a)(1) of the Retirement Code (relating to mandatory and optional membership), certain school employees may elect not to join the System in favor of an optional alternate retirement program approved by the employer.
(1) Every employee who is eligible for membership in the optional alternate retirement program shall make the election within 30 days of the first date of active employment. Employees not exercising the option to join the optional alternate retirement program shall be deemed to have chosen to commence active membership in this System, unless they have elected membership in the State Employees' Retirement System.

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

(b) Retirement Code reference: Section 8326 of the Retirement Code.]
Mr. Kim Kaufman  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17101

Dear Mr. Kaufman:

Enclosed is a copy of the Final Form Regulation, Number 43-10. It is submitted to the Independent Regulatory Review Commission, pursuant to the Regulatory Review Act of 1989.

Through these changes, it is the intent of the Public School Employees' Retirement System (PSERS) to formalize and clarify current practices, provide clear and concise language intended to remedy implementation problems that have been identified and experienced through practice, delete outdated regulations, correct grammatical errors, and address policy and procedure issues that are unique to PSERS. The changes involve no legal issues.

This Regulation change was originally filed in Proposed Rulemaking form on July 6, 2007, and published in the July 21, 2007 edition of the Pennsylvania Bulletin. The comment period for the standing committees closed on August 27, 2007, and the period for comments by the Independent Regulatory Review Commission (IRRC) ended on September 5, 2007. PSERS has provided a written response to all comments and recommendations submitted by IRRC.

A copy of this Final Form Rulemaking has been hand-delivered to the Legislative Reference Bureau, and the Majority and Minority Chairmen of the Senate Finance and House Education Committees.

Please feel free to contact this office regarding this filing. I can be reached at (717) 720-4733.

Sincerely,

Frank Ryder  
Director, Government Relations

Enclosure
I.D. NUMBER: 43-10
SUBJECT: APPLICABILITY OF GENERAL RULES; PRELIMINARY PROVISIONS; CONTRIBUTIONS AND BENEFITS; GENERAL ADMINISTRATION
AGENCY: PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

### TYPE OF REGULATION

<table>
<thead>
<tr>
<th>Proposed Regulation</th>
<th>X</th>
<th>Final Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Final Regulation with Notice of Proposed Rulemaking Omitted</td>
</tr>
<tr>
<td></td>
<td></td>
<td>120-day Emergency Certification of the Attorney General</td>
</tr>
<tr>
<td></td>
<td></td>
<td>120-day Emergency Certification of the Governor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Delivery of Tolled Regulation</td>
</tr>
<tr>
<td></td>
<td>a.</td>
<td>With Revisions</td>
</tr>
<tr>
<td></td>
<td>b.</td>
<td>Without Revisions</td>
</tr>
</tbody>
</table>

### FILING OF REGULATION

<table>
<thead>
<tr>
<th>DATE</th>
<th>SIGNATURE</th>
<th>DESIGNATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/9/08</td>
<td>April Edwards</td>
<td>HOUSE COMMITTEE ON EDUCATION</td>
</tr>
<tr>
<td>4/9/08</td>
<td>S. Pence</td>
<td>MAJORITY CHAIRMAN James R. Roeback, Jr.</td>
</tr>
<tr>
<td>4/9/08</td>
<td>G. Keeper</td>
<td>SENATE COMMITTEE ON FINANCE</td>
</tr>
<tr>
<td>4/9/08</td>
<td>B. Jane</td>
<td>MAJORITY CHAIRMAN Patrick M. Browne</td>
</tr>
<tr>
<td>4/9/08</td>
<td>J. Delvecchio</td>
<td>INDEPENDENT REGULATORY REVIEW COMMISSION</td>
</tr>
</tbody>
</table>

April 4, 2008