

RULES AND REGULATIONS

Title 22—EDUCATION

PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

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

Technical and Substantive Amendments

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

Purpose of Final-Form Rulemaking

Under Executive Order 1996-1 the Board has undertaken a review of its existing rules and regulations. Based on that review, the Board proposes a number of technical and several substantive amendments to its rules and regulations as set forth in Annex A.

General Comments

1. *Gender neutral language.* The regulations have not been comprehensively updated since 1975, and generally use the masculine tense. The proposed changes rewrite, where applicable, to gender neutral language.

2. *Deletions of language in the Code.* Generally, where the regulatory provisions merely repeat or restate language already contained in 24 Pa.C.S. Part IV (relating to Public School Employees' Retirement Code) (Retirement Code), the language was deleted as unnecessary.

Section by Section Analysis

§ 201.1. The amendments add some provisions which are intended to streamline the Board's administrative procedures, and which differ from 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 201.2. This section provides for an expedited decision when there are no factual disputes. This expedited hearing shall be agreed to by both sides, and would allow the case to go directly to the Board for adjudication.

§ 201.3. This section adopts preliminary objections and motions practice as provided in the Pa.R.C.P. This section would allow more flexibility in dealing with cases which have no factual disputes.

§ 201.4. This section requires a hearing examiner to dismiss a case when the claimant does not appear at hearing without good cause. Currently, the hearing examiners usually dismiss the case after a motion filed by the Public School Employees' Retirement System (System). These amendments would simplify the procedure.

§ 201.5. This section allows letter briefs instead of formal briefs, when the argument is no more than 3 pages. This procedure will simplify the argument process.

§ 211.1. Technical corrections have been made.

§ 211.2. Definitions.

A. *General Comment*—Deleted definitions merely repeat the Retirement Code definitions.

B. *Active member*—Adds language to conform to the act of July 22, 1983 (P. L. 104, No. 31) (Act 31), which added the concept of pickup contributions, and to conform to the act of November 30, 1992 (P. L. 737, No. 112) (Act 112), adding service as a collective bargaining organization as an approved leave of absence. The amendments delete a reference to workers' compensation as required by *Rowan*

v. SERS, 685 A.2d 238 (Pa. Cmwlth. 1996) a decision equally applicable to the System.

C. *Basic contribution rate*—Changed to conform to Act 31 by amending the rate.

D. *Beneficiary*—Technical corrections have been made.

E. *Compensation*—Technical corrections have been made.

F. *Date of termination of service*—The amendments clarify that an inactive member can remain so only for 2 years after the last date service was performed, as required by Act 31.

G. *Government service*—The amendments add this definition because of a Federal act known as USERRA (Uniformed Services Employment and Reemployment Act), which establishes various conditions for the purchase of military service.

I. *Inactive member*—The amendments clarify that the inactive member period is 2-school years rather than 2-calendar years.

J. *Valuation interest*—The amendments delete this definition because this is no longer used by the System.

§ 213.1. The amendments delete outdated provisions.

§ 213.2.

A. *Computation*—The amendments deleted the 1,100 hour standard for full time employes, as required by *Commonwealth of Pennsylvania, Public School Employees' Retirement System v. Pennsylvania School Boards Association, Inc.*, 682 A.2d 291 (Pa. 1996).

B. *Approved leave of absence*—The amendments conform to Act 112.

§ 213.3. *Technical corrections have been made.*

§ 213.4.

A. *Purchase limitations for military service*—The amendments clarify that a member may not double dip on military and System benefits.

B. *Nonschool service*—The amendments clarify that credit may be obtained for fractional periods beyond 1 year.

C. *Service as cadet nurse*—Amendments were made to conform to the act of August 5, 1991 (P. L. 183, No. 23) (Act 23).

D. *Service as county nurse*—Amendments were made to conform to Act No. 226 of 1984.

§ 213.5. The amendments delete language repetitive of code.

§ 213.5. Technical corrections have been made.

§ 213.6. Technical corrections have been made.

§ 213.7. The amendments clarify that a member shall have at least one eligibility point, rather than a year of school service, to qualify for an annuity. The clarification is more consistent with the Retirement Code's use of eligibility points in section 8306 of the Retirement Code (relating to eligibility points).

§ 213.8. The amendments delete language repetitive of code.

§ 213.9. Technical corrections have been made.

§ 213.10. Technical corrections have been made.

§ 213.21. The amendments delete outdated language.

§ 213.22. Technical corrections have been made.

§ 213.23. The amendments add activated military service as an item of purchasable credit, to conform to Act 23.

§ 213.24.

A. *Nonintervening military service*—The amendments add language allowing the purchase over a 5-year period without interest, as required by the USERRA.

B. *Activated military service*—The amendments add language allowing the purchase, as required by the USERRA.

§ 213.25. The amendments clarify that a member's estate may complete payments of purchasable service by either lump sum or actuarial reduction of the benefit.

§ 213.26. The amendments delete outdated language.

§ 213.27. Technical corrections have been made.

§ 213.30. The amendments delete outdated language.

§ 213.41. Technical corrections have been made.

§ 213.42. The amendments delete outdated language.

§ 213.44. The amendments clarify that a member whose disability is terminated can either receive an annuity or vest the benefit.

§§ 213.46 and 213.47. Technical corrections have been made.

§ 213.49. Technical corrections have been made.

§ 215.2. Technical corrections have been made.

§§ 215.3 and 215.4. The amendments delete language repetitive of the code.

§§ 215.5—215.7. The amendments delete language repetitive of the Retirement Code, as well as make technical corrections.

§ 215.8. The amendments deletes language repetitive of the Retirement Code.

§ 215.21. The amendments deletes language repetitive of the Retirement Code.

§ 215.23. Technical corrections have been made.

§ 215.31. The amendments delete language repetitive of the code.

§ 215.33. Technical corrections have been made.

§ 215.34. The amendments delete language repetitive of the code.

§ 215.35. The amendments delete language repetitive of the Code, as well as makes technical corrections.

§ 215.36. Technical corrections have been made.

Statutory Authority

The Board's authority to promulgate rules and regulations for the uniform administration of the System is section 8502(h) of the Retirement Code (relating to administrative duties of board).

The final-form rulemaking is authorized by the Board's authority to promulgate rules and regulations for the uniform administration of section 8502(h) of the Retirement Code.

Public Comment

The Board received no comments from the public on the proposed amendments.

Comments from IRRC and the House Education Committee

The Board received comments from the House Education Committee and IRRC. These comments are considered as follows:

1. IRRC commented that the expedited disposition process referred to the "timely" filing of exceptions, but did not define what "timely" meant.

Section 201.1, generally adopts 1 Pa. Code Part II. These general rules set forth the exception practice for excepting to hearing examiner recommendations, including the timeliness requirements. Thus, there is no need to specify the time period in this section.

2. IRRC commented that § 201.3(b) should be amended by deleting the word "either," to clarify that both System and claimant may file motions.

This change has been made.

3. IRRC commented that the definition of "accumulated deductions" should replace "his" with "the member's."

This change has been made.

4. IRRC commented that the definition of "active member" refers to "applicable provisions of the code," and that the specific provisions should be inserted.

This change has been made.

5. Both IRRC and the House Education Committee commented that the definition of "beneficiary" should replace the last "his" with "the member's" to avoid confusion as to whose death triggers the death benefit.

This change has been made.

6. Both IRRC and the House Education Committee commented that the term "Thaddeus Stevens State School of Technology" should be amended to reflect the change in name to "Thaddeus Stevens College of Technology."

This change has been made.

7. IRRC commented that the definition of "school year" should delete reference to "governmental entity" and refer instead to "employer," because the regulations do not define "governmental entity."

No change was made. Section 8102 of the code (relating to definitions), which contains a definition of "school year," refers to the term "governmental entity," which is a defined term. The regulations definition conforms to that of the Retirement Code, and also contains a definition of "governmental entity."

8. Both IRRC and the House Education Committee commented that the definition of "code" should be replaced by reference to the "Retirement Code," to avoid confusion with reference to the Public School Code.

This change has been made, and the word "Retirement" has been added throughout the Regulations wherever "Code" refers to the Retirement Code.

9. IRRC commented that the definition of "intervening military service" should be added.

This change has been made.

10. IRRC commented that the definition of "pickup contributions" should be added.

This change has been made.

11. IRRC commented that the substantive provisions in the definition of "active member" should be deleted.

This change has been made.

12. IRRC commented that the substantive provisions in the definition of "basic contribution rate" should be deleted.

This change has been made.

13. IRRC commented that the substantive provisions in the definition of "beneficiary" should be deleted.

This change has been made, with the substantive language inserted into § 213.47.

14. IRRC commented that the substantive provisions in the definition of "school employe" should be deleted.

This change has been made, with the substantive provisions inserted into § 215.5(d)(3).

15. IRRC commented that the substantive provisions in the definition of "vestee" should be deleted.

This change has been made, with a portion of the definition inserted into the definition of "effective date of retirement."

16. IRRC commented that section 213.2(b), which refers to leaves of absence "as authorized under the applicable provisions of the code," should specify the applicable sections.

This change has been made.

17. IRRC commented that § 213.4(a), which refers to the "State Employees' Retirement System," should be amended to refer to the PSERS "System."

This change has not been made, because this section correctly refers to the "State Employees' Retirement System," and is not intended to refer to the PSERS System. Also, "System" is defined in § 211.2 as the "Public School Employees' Retirement System."

18. Both IRRC and the House Education Committee commented that the reference to Class T-A, T-B and T-C service in § 213.5 is not clear in context, and recommended that these classes be defined in the definition of "superannuation or normal retirement age" definition.

This change has been made.

19. IRRC commented that § 213.23 should clarify who certifies previous school service for multiple service members, and explain the process of certification.

This section has been amended to reflect that the Board certifies the previous school service. The precise process of certification is an internal process, which may change from time to time for reasons of efficiency and reducing administrative expenses.

20. IRRC commented that § 213.24(c)(3) replace "of years not in excess of 5" with "not to exceed 5 years."

This change has been made.

21. IRRC commented that the certification process, as well as the entity responsible for certifying, be added to § 213.25(d), referring to purchase of creditable nonschool service.

This section has been amended to reflect that the Board certifies creditable nonschool service. The precise process of certification is an internal process, which may change from time to time for reasons of efficiency and reducing administrative expenses.

22. IRRC commented that § 213.44(c) should be retained.

This change has been made.

23. Both IRRC and the House Education Committee commented that cross-references to the Retirement Code should be added to the sections, for greater ease in usage.

This change has been made, and a cross reference to each Retirement Code section has been added to the end of each section.

24. IRRC commented that the reference to the Probate, Estates and Fiduciaries Code in § 215.7(d) be retained.

This change has been made.

25. IRRC commented that the reference to Probate, Estates and Fiduciaries Code in § 215.33 be retained.

This change has been made.

26. The House Education Committee commented that the Board should calculate potential cost savings from the streamlined administrative procedural rules.

Actual cost savings are hard to quantify with respect to cases to which the streamlined administrative procedures apply. Nevertheless, the Board believes that the expedited hearing process, as well as the summary judgment motions, will allow the Board to bypass the use of hearing examiners in cases where there is a pure legal issue. The Board now handles an average of 30 cases per year, and the average hearing examiner cost (including costs of transcriptions of testimony), is about \$4,000. Assuming that 10% of the new cases can be handled without involvement of the hearing examiner, we project a savings of \$12,000. If 20% of new cases can be handled without a hearing examiner, we project the savings to be \$24,000. Regardless of these savings, there will be better service to the members, and better productivity from the staff in handling these cases.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 28 Pa. B. 1543 (March 28, 1998) to IRRC and the Chairpersons of the House Education Committee and the Senate Finance Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the agency also provided IRRC and the Committees with copies of all comments received.

In preparing the Final-Form Regulation, the agency has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act, these final-form regulations were deemed approved by the House and Senate Committees on September 22, 1998. IRRC met on September 24, 1998, and deemed approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

Fiscal Impact and Paperwork Requirements

The final-form regulations do not impose increased costs or increased paperwork requirements on the Commonwealth, local governments, the private sector or the general public.

Persons Affected

The final-form regulations affect all active and inactive System members, public school employers and retirees.

Effective Date

The final-form regulations will be effective immediately upon publication in the *Pennsylvania Bulletin*.

Sunset Date

A sunset date is not being established for these final-form regulations because they are necessary for the administration of the substantive provisions of the code. The Board will closely monitor these regulations for their effectiveness.

Further Information

Individuals who need information about the final-form regulations may contact Frank Ryder, Director, Government Relations, Public School Employees' Retirement System, 5 North Fifth Street, P. O. Box 125, Harrisburg, PA 17108-0125.

Finding

The Retirement Board finds that:

(1) Public notice of the Board's intention to adopt the final-form regulations was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1202 and 1202), and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2

(2) The adoption of the final-form regulations is necessary and appropriate for the administration of the code.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapters 201, 211, 213 and 215, are amended by amending §§ 201.1, 211.1, 213.1—213.7, 213.9, 213.10, 213.22—213.25, 213.27, 213.30, 213.41, 213.44—213.47, 213.49, 215.2, 215.5—215.8, 215.23, 215.33, 215.35 and 215.36; by adding 201.2—201.5; and by deleting §§ 213.8, 213.21, 213.26, 213.42, 215.3, 215.4, 215.8, 215.21, 215.31 and 215.34 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and Office of General Counsel as required by law.

(c) 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*.

JAMES A. PERRY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa. B. 5189 (October 10, 1998).)

Fiscal Note: Fiscal Note 43-7 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART XIII. PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD

CHAPTER 201. APPLICABILITY OF GENERAL RULES

Sec.	
201.1.	Applicability of general rules.
201.2.	Expedited disposition process.
201.3.	Motions practice.
201.4.	Dismissal for nonappearance.
201.5.	Letter briefs.

§ 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 Administra-

tive Practice and Procedure), are applicable to the activities of and proceedings before the Board, except as provided in this chapter.

§ 201.2. Expedited disposition process.

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.

§ 201.3. Motions practice.

(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.

§ 201.4. Dismissal for nonappearance.

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.

§ 201.5. Letter briefs.

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.

CHAPTER 211. PRELIMINARY PROVISIONS

Sec.	
211.1.	Short title of part.
211.2.	Definitions.

§ 211.1. Short title of part.

(a) This part is promulgated under the Retirement Code.

(b) Cross reference: Section 8101 of the Retirement Code (relating to short title of part).

§ 211.2. Definitions.

(a) 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—A school employe for whom pickup contributions are 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. It shall exclude employes who are on leave of absence without pay.

Actuarially equivalent—Equal present values, computed on the basis of statutory interest and the mortality tables currently adopted and used by the Board.

Annuitant—A member on or after the effective date of retirement, until the annuity is terminated, but excludes a beneficiary or survivor annuitant.

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

Beneficiary—The person last designated by a member in writing to the Board on forms supplied by the Board to receive accumulated deductions or a lump sum benefit upon the member's death.

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

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 the 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—A governmental entity directly responsible for the employment and payment of the school employe and charged with the responsibility of providing public education within this Commonwealth. The term includes all governmental entities whose employes under prior law and regulations are members of the System as of the effective date of the Retirement Code.

Final average salary—In the case of a part-time employe, 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 employe or a State employe, or both.

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, without objection from the Department of Education, during which a school employe is employed daily for instructional purposes.

Full time employe—An employe employed no less than 5 hours per day or 25 hours per week or its equivalent.

Fund—The Public School Employees' Retirement Fund.

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

Government service—Service as an administrator, teacher, or instructor in the field of public school education for an agency or department of the government of the United States.

Inactive member—A member for whom no pickup contributions are being made, who has accumulated deductions standing to the member's credit in the Fund and for whom no pickup contributions have been made within the last 2 school years or a multiple service member who is active in the System. 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.

Internal Revenue Code—26 U.S.C.A. §§ 1—7872.

Intervening military service—Active military service of a member who was a school employe 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.

Member's annuity—An amount determined by dividing the accumulated deductions of the member by the cost of a \$1 annuity based on the nearest age of the member at the effective date of retirement and computed on the basis of statutory interest and mortality tables adopted and used by the Board.

Nonprofessional members—The term includes all school employes who are not professional members and who also qualify for membership in the System under section 8301 of the Retirement Code (relating to mandatory and optional membership).

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

Professional members—As defined in section 1101 of the Public School Code of 1949 (24 P. S. § 11-1101) including all temporary professional employes, professional employes, 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.

Public school—Any or all classes or schools within this Commonwealth conducted under the order and superintendence of the Department of Education including, but not limited to: all educational classes of an employer charged with the responsibility of public education within this Commonwealth as well as those classes

financed wholly or in part by the Federal Government, State-owned colleges and universities, the Pennsylvania State University, community colleges, area vocational-technical schools, intermediate units, the State Board of Education, Scotland School for Veterans' Children, Thaddeus Stevens College of Technology and the Pennsylvania State Oral School for the Deaf. In all cases of doubt, the Board will determine whether any particular governmental entity is eligible as an employer within the meaning of the Retirement Code.

Retirement Code—The Public School Employees' Retirement Code, 24 Pa.C.S. §§ 8101—8534.

Salary deductions—The amounts certified by the Board to be deducted from the compensation, as determined for retirement purposes, of an active member and paid into the Fund for the purposes of purchasing current service, previous school service, pickup contributions and creditable nonschool service, as the case may be.

School employe—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 employe excluding, however, any independent contractor or a person compensated on a fee basis. 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.

Statutory interest—As applied to contributions of members, interest at 4% per annum compounded annually.

Superannuation or normal retirement age—

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

System—The Public School Employees' Retirement System.

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

(b) Cross reference: Section 8102 of the Retirement Code (relating to definitions).

CHAPTER 213. CONTRIBUTIONS AND BENEFITS

GENERAL PROVISIONS

Sec.	
213.1.	Mandatory and optional membership.
213.2.	Credited school service.
213.3.	Eligibility points for retention and reinstatement of service credits.
213.4.	Creditable nonschool service.
213.5.	Classes of service.
213.6.	Eligibility points.
213.7.	Eligibility for annuities.
213.8.	(Reserved).
213.9.	Eligibility for death benefits.
213.10.	Eligibility for refunds.

CONTRIBUTIONS

- 213.21. (Reserved).
- 213.22. Joint coverage member contributions.
- 213.23. Member contributions for creditable school service.
- 213.24. Contributions for the purchase of credit for creditable school and nonschool service.
- 213.25. Incomplete payments.
- 213.26. (Reserved).
- 213.27. Payments by employers.
- 213.30. Appropriations by the Commonwealth.

BENEFITS

- 213.41. Return of accumulated deductions.
- 213.42. (Reserved).
- 213.44. Disability annuities.
- 213.45. Change in benefit payment plan.
- 213.46. Termination of annuities.
- 213.47. Death benefits.
- 213.49. Payment of benefits.

§ 213.1. Mandatory and optional membership.

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

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

(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 employe annually qualifies under this section based on the service rendered during a school year. A per diem or hourly school employe 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 employe exceeds the minimums stated in this paragraph, be a mandatory member for that fiscal year period only.

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

(i) A school employe 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 employe 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) Cross 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 employe shall receive 1 year of credited service for each nonoverlapping period of 12 consecutive employable months for which the employe contributes for at least 180 full-day sessions of employment. A full-time salaried employe is not eligible to earn more than 1 year of credited service during 12 consecutive months although the employe 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 employe, 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 employe is employed during a school year.

(3) A per diem employe, 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 employe, having achieved membership eligibility by virtue of being employed no less than 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) employes 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:

(1) The member shall return to the school district for a period at least equal to the length of the leave or 1 year, whichever is less, unless this condition is waived by the employer.

(2) Proper current contributions, based on the salary as if the member had been in regular full-time employment 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 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.

(c) *Cancellation.* In all cases when a member withdraws accumulated deductions, all credited service shall be canceled. Any member who has so withdrawn accumulated deductions and has credited service canceled shall, upon a re-entry into the System, be eligible to purchase this service under this section 8303 of the Retirement Code (relating to eligibility points for retention and reinstatement of service credit).

(d) *Improperly credited service.* If the Board finds that any school service has been improperly credited, it will cancel the credit and refund to the member any accumulated deductions attributable thereto.

(e) Cross reference: Section 8302 of the Retirement Code.

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

(a) Every active member shall accrue one eligibility point for each year of credited school service although the actual service rendered may exceed 180 full-day sessions or 1,100 hours of employment during any period of 12 consecutive months.

(b) Every active member or multiple service member who is active in the State 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.

(c) In all instances when creditable school or nonschool service may be purchased, an active member, having elected to purchase the service, is not permitted to cancel the purchase once payment has been made by lump sum, or once the member has agreed, in writing, to payroll deductions upon the terms and conditions as provided in this part.

(d) Cross reference: Section 8303 of the Retirement Code (relating to eligibility points for retention and reinstatement of service credits).

§ 213.4. Creditable nonschool service.

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

(b) Creditable nonschool service shall be available to all members identified in subsection (a), except those who may be entitled to receive, eligible to receive, now or in the future, or are currently receiving retirement or pension benefits for the service under a retirement or pension program administered and wholly or partially paid for by another governmental agency or by a private employer or by a retirement program approved by the employer in accordance with the optional retirement provisions authorized in section 8301(a)(1) of the Retirement Code (relating to mandatory and optional membership).

(c) Intervening military service shall be service of an active nature rendered to the armed forces of the United States for which an active member had school service interrupted so that the member could serve voluntarily or otherwise in order to fulfill a draft obligation in time of war or armed conflict. Intervening military service shall be disallowed or canceled when the required military tour of duty has been voluntarily extended beyond the time of military obligation, with or without the implied or express consent of the employer.

(d) An active member may purchase other military service, of a nonintervening nature, not exceeding 5 years, for service rendered only to the armed forces of the United States before the member commenced his most recent school employment. An active member who is receiving disability compensation based on a service-connected injury or illness as a result of active military service shall be eligible for credit for intervening or nonintervening military service.

(e) Purchase limitations for intervening and nonintervening military service and conditional credit shall be as follows:

(1) An active member may not purchase intervening or nonintervening military service, if the member has obtained credit and is eligible now or in the future to receive a pension for this service from another employer or governmental agency. Upon application to purchase this service, the member shall be required to submit proof as to eligibility or ineligibility for any pension benefits from the other employer or governmental agency, as the Board may require. If the Board determines that this service is ineligible, the application will be denied. If the Board later determines that the purchased service should have been ineligible, it will cancel the service purchased and refund to the member the accumulated deductions attributable to this service at the time of retirement or termination of service, unless cancellation and refund is requested prior thereto. If subsequent to retirement, the Board learns that a member has falsified a record, it may take action as is otherwise provided in the Retirement Code.

(2) Conditional credit for nonintervening military service shall be available for all active military service actually rendered for which purchase shall be requested but may not exceed 5 years of the service, provided the member has 3 years of credited school service subsequent to the military service for which credit is requested.

(f) Nonschool service may be purchased by an active member who was a teacher or instructor in a public school or public educational institution in a state other than the Commonwealth or in a territory or area under the jurisdiction of the United States and the service may also be purchased by an active member who was an administrator, teacher or instructor in the field of public school education for an agency or department of the United States Government whether under its jurisdiction or not. The nonschool service rendered shall be for not less than 1 full year. The total service purchased may not exceed 12 years or the number of years of school service credited in the system, whichever is less.

(g) Nonschool service in the Cadet Nurse Corps may be purchased by an active member for a period of training as a student or graduate nurse under a plan approved under section 2 of the act of June 15, 1943 (Pub. L. No. 78-73, 57 Stat. 153), if the total period of training under the plan was at least 2 years, and the credit for the service does not exceed 3 years.

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

(i) Creditable nonschool service may also be purchased for previous service as an employe 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 Employes' Retirement System. This limitation on total permissible nonschool service credit does not apply to the service provided in subsection (i).

(k) Cross reference: Section 8304 of the Retirement Code.

§ 213.5. Classes of service.

(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) Cross 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 Employes' 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.

(b) Cross reference: Section 8306 of the Retirement Code (relating to eligibility points).

§ 213.7. Eligibility for annuities.

(a) To be eligible for any annuity payable under the Retirement Code and this part a member shall have at least one eligibility point.

(b) Cross reference: Section 8307 of the Retirement Code (relating to eligibility for annuities).

§ 213.8. (Reserved).

§ 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 to family).

(b) Cross reference: Section 8309 of the Retirement Code (relating to eligibility for death benefits).

§ 213.10. Eligibility for refunds.

(a) An active member, upon termination of service, may elect to receive the member's accumulated deductions in lieu of any benefit to which the member would otherwise be entitled and the election shall constitute an irrevocable waiver of the entitlement unless there is a subsequent return to and reinstatement of service.

(b) Cross reference: Section 8310 of the Retirement Code (relating to eligibility for refunds).

§ 213.21. (Reserved).

§ 213.22. Joint coverage member contributions.

(a) New members of the System, or former members returning to school service, are not eligible to make joint coverage member contributions. These contributions shall be limited to members who meet all the following criteria:

(1) They were in active membership in the System subsequent to May 28, 1957.

(2) Their current period of membership began prior to January 1, 1966.

(3) They are covered by Federal Social Security.

(4) They have not filed an election to convert to the full coverage group.

(b) Cross reference: Section 8322 of the Retirement Code (relating to joint coverage member contributions).

§ 213.23. Member contributions for creditable school service.

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

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

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

(d) The payment for the purchase of all credit authorized by this chapter, except that for sabbatical leave and activated military service leave, shall be payable in a lump sum within 90 days after certification of the amount due or, in the case of an active member, may be authorized through payroll deductions over a period of years not in excess of 6 years, if statutory interest at 4% annually is charged through the repayment period. The amount certified by the Board for the purchase of the this credit shall be in accordance with methods approved by the actuary.

(e) Cross 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 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.

(2) In the case of service rendered by an active member to a county board of school directors, now designated an intermediate unit, the member is only responsible for the purchase of the member's share for the previous service rendered to the county board of directors.

(3) Except for sabbatical leaves of absence, in the case of approved leaves of absence, the employe 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 employe's salary as if the employe had been in full-time employment during the leave period, the employe is only required to pay the employe 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. The amount due for the purchase of the military service, as calculated under this subsection, may be paid in a lump sum within 90 days after certification of the amount due, or in the case of an active member, may be amortized through payroll deductions over a period of years not in excess of 5 years without interest. 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 completed at least 3 years of subsequent credited school service as a Class T-C member.

(c) *Contributions for purchase of intervening military service.* An active member eligible to purchase credit for intervening military service shall pay the amount due in accordance with the following formula: The member's basic contribution rate at the time of entry into the active military service multiplied by the member's then compensation and by years of the military service together with statutory interest during all periods of subsequent school and State service to the date of purchase, if all the amounts due shall be in accordance with methods certified and approved by the actuary. The amounts due for the purchase of the service may be paid under one of the following methods:

(1) Regular monthly payments submitted through the school district based on the compensation of the member

which the member would have received at the time of entry into active military service without statutory interest since the payments are made on a current contributing basis.

(2) A lump sum payment within 90 days of the date of the amount certified to be due and owing.

(3) Through amortized salary deductions over a period not to exceed 5 years.

(d) *Contributions for purchase of other creditable nonschool service.* An active member shall pay the amount due for creditable nonschool service in accordance with the following formula: The member's basic contribution rate plus the normal contribution rate, applied to the member's first year salary of credited school service subsequent to the creditable nonschool service sought to be purchased, multiplied by the number of years or fractional parts of a year of the service purchased, together with statutory interest during all subsequent years of school or State service to the date of purchase. The active member may pay the amount due in a lump sum payment within 90 days after the date of certification by the Board of the amount due or through salary deductions amortized over a 1, 2, but not more than 3-year period, if statutory interest is charged through the repayment period, and if the amounts due are in accordance with methods certified and approved by the actuary. This formula for purchase does not apply in the case of purchase of creditable nonschool service rendered to a county board of school directors. In this event, the member shall only pay the amount due based on the member's basic contribution rate exclusive of the normal contribution rate.

(e) Cross reference: Section 8324 of the Retirement Code (relating to contributions for purchase of credit for creditable nonschool service).

§ 213.25. Incomplete payments.

(a) *Right to make incomplete payments.* The right of a member to complete payments, once commenced, within 30 days after termination of school service, as provided in section 8325 of the Retirement Code (relating to incomplete payments), shall be available only to the member and to no other person, including a beneficiary.

(b) *Result of incomplete payments.* If a member fails to pay the balance of the agreed-upon payments due within 30 days of termination of school service, or if a member dies in school service, or 30 days thereafter, the annuity benefit to which the member would otherwise be entitled shall be reduced by the actuarial equivalent of the debt, including statutory interest.

(c) *Payments under certain conditions.* If a member agrees to make payments for purchase of certain service, as provided in sections 8323 and 8324 of the Retirement Code (relating to member contributions for creditable school service; and contributions for purchase of credit for creditable nonschool service), and dies in school service, or terminates school service before any payments are made, the request for purchase of the service shall be canceled, unless payment is made in a lump sum payment, within 30 days after the event, by the member or anyone acting on his behalf.

(d) *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

after the certification is made, or by reducing the annuity benefit by the actuarial equivalent of the debt, including statutory interest.

(e) Cross reference: Section 8325 of the Retirement Code.

§ 213.26. (Reserved).

§ 213.27. Payments by employers.

(a) To facilitate the payment by employers of the contributions required on a quarterly basis of 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 days following its termination. The Board will, upon receipt of the monthly reports totaling each quarter, bill the employer no later than 45 days subsequent to the termination of the preceding quarter, the billing to be 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 quarter. If an employer fails to make timely payments, the Board will certify to the State Treasurer and Secretary of Education, the names of an employer found delinquent by failure to pay the delinquency, whereupon the subsidy nearest the date following the delinquency shall be reduced by the amount of the delinquency or amount found owing.

(b) The Board will, if an employer is delinquent in paying employer contributions as provided in subsection (a) or in failing to remit employe contributions in a timely manner as required in section 8506(c) of the Retirement Code (relating to duties of employers) 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.

(c) Cross reference: Section 8327 of the Retirement Code (relating to payments by employers).

§ 213.30. Appropriations by the Commonwealth.

(a) The Board will prepare and, through the Governor, submit annually to the General Assembly, an itemized budget consisting of the amounts necessary to be appropriated based on the actuarial cost method as certified by the actuary and presented to the Board. The sum of the various contribution rates established by the actuary, as certified by the Board, shall be applied to the total projected member payroll for the succeeding fiscal year.

(b) Cross reference: Section 8330 of the Retirement Code (relating to appropriations by the Commonwealth).

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.

(b) Cross reference: Section 8341 of the Retirement Code (relating to return of accumulated deductions).

§ 213.42. (Reserved).

§ 213.44. Disability annuities.

(a) A 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 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 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 employe, if 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) Cross reference: Section 8344 of the Retirement Code (relating to 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 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 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 was not corrected by the System until after the application for an annuity was filed, and either of the following exists:

(i) The difference between the monthly annuity as corrected and the monthly annuity calculated with the error is more than 5%.

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

(2) The annuitant demonstrates that the annuitant, or the annuitant's agent, made a written error on the application for an annuity. The System will not consider a change in the life circumstances of the annuitant, beneficiaries or survivor annuitants (for example, death, divorce, illness, accident) as evidence of a written error.

(c) The intended changes may include one or a combination of the following:

(1) A change in the amount of money withdrawn under Option 4.

(2) A change in the retirement annuity type, if the member is otherwise eligible for the annuity.

(3) A change in the retirement option, including a change in the survivor annuitant under the existing option selection.

(4) A voiding of the application for an annuity.

(5) A change in the effective date of retirement, if the date is not:

(i) Before the earliest date the annuitant was eligible to select on the date the original application for an annuity was filed.

(ii) Later than 90 days after the intent to change is filed.

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

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

(2) Counseling, or a written waiver, takes place within 30 days of the filing of the intent to change.

(3) The Secretary of the Board 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.

(4) If counseling takes place over several sessions, the sessions take place within the allowed time period.

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

(6) Counseling may be conducted by telephone when approved, and under conditions specified by the Secretary.

(e) A formal request to void or change the application for an annuity shall be filed with the System within 30 days of the date of completion of counseling, or within 30 days of the filing of the written waiver of counseling. If the System does not receive the formal request to void or change the application for an annuity within the prescribed time period, the intent to change will be deemed withdrawn.

(f) The right to void or change a benefit payment plan is personal to the annuitant and may only be exercised by the annuitant or the annuitant's attorney in fact. The estate, spouse, alternate payee, survivor annuitants or beneficiaries of an annuitant may neither file nor complete an intent to void or change the benefit payment plan. If an annuitant dies before filing or completing an

intent to void or change the benefit payment plan, the intent will be deemed withdrawn.

(g) An annuitant may file an intent to change one time under subsection (a) and one time under subsection (b).

(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 return any excess monthly annuity payments or moneys withdrawn under Option 4 either by:

(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 to be applied to the annuitant's account.

(3) If the annuitant fails to return the required amounts or elect a debt as the case may be, the intent to change or void will be deemed withdrawn.

(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 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.

(j) This section shall be effective June 13, 1998. This section also applies to annuitants who, prior to June 13, 1998:

- (1) Requested a change in their benefit payment plan.
- (2) Appealed the System's denial.
- (3) Otherwise qualify under this section.

(k) This section does not allow the annuitant to change a benefit payment plan in a manner inconsistent with the terms of an approved domestic relations order under sections 8533.1—8533.4 of the Retirement Code.

(l) Cross reference: Section 8345 of the Retirement Code (relating to member's options).

§ 213.46. Termination of annuities.

(a) *Return to school service or entering school service.* An annuity payable under the Retirement Code will be automatically discontinued if the annuitant returns to school service or enters State service and elects multiple service except as otherwise provided in section 8346 of the Retirement Code (relating to 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 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 days thereafter, is not eligible to elect the membership.

(c) *Emergency return to school service.* An annuitant returning to school service in an emergency situation, as provided in section 8346(b) of the Retirement Code, and who works in excess of 95 days in a school year, shall

suffer discontinuance of an annuity from the 96th day of the service and the Board will make adjustment as the case may warrant.

(d) *Termination of annuities—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 contractor 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) Cross reference: Section 8346 of the Retirement Code.

§ 213.47. Death benefits.

(a) If a beneficiary is not designated, or a designated beneficiary fails to survive to receive any of the death benefits provided in section 8347 of the Retirement Code (relating to death benefits), 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 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) Cross reference: Section 8347 of the Retirement Code.

§ 213.49. Payment of benefits.

(a) No annuity granted under the Retirement Code will be paid in other than equal monthly installments. Option 4 may provide for a lump sum payment of no more than the accumulated deductions to be paid to the member before equal monthly installments commence.

(b) If a beneficiary predeceases a member, or dies within 30 days of the member's death, or if there is no valid beneficiary designation on file to take effect at death, money payable from the account of the member shall be paid to the estate of the member or next of kin, under 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) as the case may be.

(c) As in the case of a member, an election by a beneficiary for an annuity, when made, shall be deemed to be irrevocable.

(d) Cross reference: Section 8349 of the Retirement Code (relating to payment of benefits).

**CHAPTER 215. GENERAL ADMINISTRATION
GENERAL PROVISIONS**

Sec.	
215.2.	Administrative duties of the Board.
215.3.	(Reserved).
215.4.	(Reserved).

- 215.5. Duties of the Board.
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- 215.31. (Reserved).
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 215.35. General regulations.
 215.36. Optional alternate retirement programs.

§ 215.2. Administrative duties of the Board.

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

(b) The Board will furnish, to the extent required by Federal law, information to members concerning those provisions of the Internal Revenue Code which may impose a tax liability upon a member or beneficiary. The sole responsibility for the tax liability, including the tax computation, is imposed upon the member and not the Board and the member should consult tax counsel or legal counsel for advice in these matters since the Board is not qualified or required to offer advice.

(c) Under section 8502(g) of the Retirement Code (relating to administrative duties of board), an employer failing to comply with procedures as mandated in the Retirement Code dealing with duties imposed upon employers, shall pay for the cost of performing these duties, if the Board initiates action to perform the duties on behalf of the employer not doing so. If an employer is delinquent in the payment of contributions in accordance with section 8327 of the Retirement Code (relating to payments by employers), the Board will notify the Secretary of Education and the State Treasurer of the delinquency for the action as those officials are required to take hereunder, consistent with the billing and delinquency requirements in § 213.27(a) (relating to payments by employers).

(d) Regulations adopted and promulgated for the uniform administration of the System shall be subject to prior approval by the actuary with respect to all computational procedures used in the calculation of contributions, benefits and related matters.

(e) The Board will, each year, in addition to its itemized budget, which is submitted through the Governor's Office for General Assembly approval, also certify to the employers and the Commonwealth that percentage of total member's payroll necessary for the funding of prospective annuities for active members and the rates and amounts of normal accrued liability and supplemental contributions to be paid to the Fund, which actuarial certification will be regarded as final after Board approval. It is not subject to modification by the Budget Secretary or any other Commonwealth official.

(f) The Board will, in compliance with the percentage certifications in subsection (e), determine within 30 days following the end of each quarter the amount due based thereon, taking into consideration the member's total payroll and shall submit simultaneously therewith a requisition for the amount determined to be due from the Commonwealth.

(g) 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 school service.

(h) Cross reference: Section 8502 of the Retirement Code (relating to administrative duties of Board).

§ 215.3. (Reserved).

§ 215.4. (Reserved).

§ 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.

(2) A disability applicant who is required by the Board to furnish additional medical documentation to support the application, shall provide the documentation within 30 days of the request, or the Board may render the disability application void.

(3) The chief medical examiner, or other medical examiners the Board may engage, may recommend to the Board, on the basis of subsequent medical examinations, whether a disability annuitant should continue on disability or whether a finding of nondisability may be appropriate. In the latter event, the Board will establish the date of termination of disability, based on the recommendation of the medical examiner, whereupon the disability annuity shall be discontinued in excess of any annuity to which the member may be otherwise entitled under section 8342 of the Retirement Code (relating to maximum single life annuity).

(4) If the Board denies a disability applicant for insufficient medical evidence, the applicant may still file, within 90 days after notification of the denial, an application to vest or take an annuity, if the applicant is eligible. The filing shall be considered timely, as of the original eligibility date, for the purposes of payment of other benefits or vesting, as the case may be.

(5) A disability annuity may also be subject to a disability annuity adjustment depending upon the earned income of the annuitant, as provided in section 8505(c)(3)

of the Retirement Code (relating to duties of board regarding applications and elections of members).

(b) *Refund to members.* If the Board finds that a member is terminating service at the end of a school year intending to return the subsequent school year, following vacation periods, and to reinstate accumulated deductions, the Board may choose not to pay the deductions in the first instance. The Board may require certification from the employer that these events are not intended.

(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:

(1) If a member dies in service and is eligible for a death benefit, the Board will, within 60 days after receipt of the necessary data and death certificate, pay the death benefit to the designated beneficiary or survivor annuitant, as the case may be.

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

(3) In cases of doubt, the Board will determine whether any person is a school employe 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.

(e) Cross reference: Section 8505 of the Retirement Code (relating to duties of board regarding applications and elections of members).

§ 215.6. Duties of employers.

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

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

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

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

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

(i) If the employer anticipates that an employe shall become eligible for membership during the fiscal year, the employe shall be enrolled as a member at the

beginning of the fiscal year, or upon employment, and contributions shall be deducted on a current basis. This service shall be counted for retirement purposes.

(ii) If an employe is enrolled as a member at the beginning of the fiscal year, or when employed, and does not qualify during that fiscal year, the employe is then entitled to a refund of accumulated deductions. If an employe is not enrolled at the beginning of the fiscal year, or date of employment, but qualifies during the fiscal year, the school district shall make deductions from that time forward and the employe shall then purchase 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) Cross reference: Section 8506 of the Retirement Code (relating to duties of employes).

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

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

(b) *Proof of date of birth.* Proof of date of birth shall be accepted in the following order of preference:

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

(10) Other records as may be submitted by the member, which are acceptable to the Board.

(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 30 days after active membership in this System.

(d) *Beneficiaries.* Every member shall nominate a beneficiary and contingent beneficiary, if desired, on a form to be filed 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.

(e) *Termination.* Upon termination of service, a member, by written application, may elect to do one of the following:

(1) Withdraw the accumulated deductions, thereby forfeiting other benefit, to which the member would otherwise be entitled.

(2) Vest the retirement account, thereby making the member eligible for the vesting benefits as otherwise provided in this part. If the member is a joint coverage member, the member may elect to become a full-coverage member and to pay the lump sum required within 30 days subsequent to termination of service.

(3) Receive an immediate annuity and, in the case of joint coverage membership, pay the lump sum required to become a full-coverage member within 30 days of termination of service.

(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 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:

(1) If a member elects Option 1, the member may change the designated beneficiary at any time.

(2) If the member selects a survivor annuity option, a new survivor annuitant may not be named except when the survivor annuitant predeceases the member or there is 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.

(3) An annuitant having a right to reelect an option and name a new survivor annuitant under the circumstances in paragraphs (1) and (2), may do so at any time after the death of the beneficiary or change in marital status.

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

§ 215.8. (Reserved).

MANAGEMENT OF FUNDS AND ACCOUNTS

§ 215.21. (Reserved).

§ 215.23. **Member's savings account.**

(a) Interest is credited to each member's savings account during active or inactive service and also during the period a vestee retains vested credits. Interest is not credited to a member's savings account if the member has terminated service or has been an inactive member over 2 years and is not eligible for vested benefits. The rate of interest when credited is the statutory rate of 4% per annum.

(b) Cross reference: Section 8523 of the Retirement Code (relating to member's savings account).

MISCELLANEOUS PROVISIONS

§ 215.31. (Reserved).

§ 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) 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.

(b) Cross reference: Section 8533 of the Retirement Code (relating to taxation, attachment and assignment of funds).

§ 215.34. (Reserved).

§ 215.35. **General regulations.**

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

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

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

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

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

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

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

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

§ 215.36. Optional alternate retirement programs.

(a) Under section 8301(a)(1) of the Retirement Code (relating to mandatory and optional membership), certain school employes may elect not to join the System, or to depart from it in favor of an optional alternate retirement program approved by the employer, such as the Secretary of Education or the governing body of certain State institutions, including Pennsylvania State University, as the case may be. Therefore, the following are adopted by the Board to establish guidelines and procedures, insofar as the Board is authorized to so do, with respect to implementing such a program for certain eligible school employes:

(1) Section 8303(a)(1) of the Retirement Code (relating to eligibility points for retention and reinstatement of source credits) purports to authorize the existence of an optional alternate retirement program under the responsibility of the employer.

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

(3) When an eligible employe, who is an active member of the System, elects to participate in the optional alternate retirement program in accordance with paragraph (2), the employe may elect to withdraw the accu-

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

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

(5) When an eligible employe elects to participate in the optional alternate retirement program in accordance with paragraph (2) or (4), the election is final and binding so long as the employe shall remain eligible to remain in the optional alternate retirement program. When an employe later is employed in a capacity which does not qualify for membership in the optional alternate retirement program, the employe shall, upon meeting the qualifications for membership in the System, resume making contributions to the fund or reinstate the former credited service for which contributions had been withdrawn, as the case may be, in accordance with the applicable provisions of the Retirement Code. Service, salary or other compensation paid to an employe while a member of the optional alternate retirement program will not be credited toward membership in this System.

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

(b) Cross reference: Section 8301 of the Retirement Code.

[Pa.B. Doc. No. 98-1704. Filed for public inspection October 16, 1998, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Examination Fees

The State Board of Pharmacy (Board) amends §§ 27.21, 27.24 and 27.91, pertaining to examinations for licensure, to read as set forth in Annex A.

Under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a) and sections 3, 6(k) and 8.2 of the Pharmacy Act (act) (63 P. S. §§ 390-3, 390-6(k) and 390-8.2), examinations for licensure must be prepared and administered by a professional testing organization under contract to the Board. The Board utilizes the examinations of the National Association of Boards of Pharmacy (NABP). The NABP consists of the licensing boards of all 50 states, the District of Columbia and United States territories and possessions. The NABP has now developed a computer-based adaptive examination to replace the Federal Drug Law Examination (FDLE) on pharmacy jurisprudence. Beginning in November 1998, the NABP will offer in computerized format the Multistate Pharmacy Jurisprudence Examination (MPJE) as the National uniform examination to test entry-level knowledge in jurisprudence prerequisite to licensure as a pharmacist. A professional testing organization under contract with the NABP will offer the examination Monday through Friday, excluding holidays, at a network of computer-based test centers. Candidates who meet the eligibility requirements of §§ 27.21—27.25 will receive a schedule of available test dates, times and locations. Eligible candidates may then take the MPJE at a time convenient to them and the test center. The greater number of test centers and available test times will enhance scheduling flexibility for candidates. Additionally, candidates will receive test scores in a far more timely manner.

The amendments reflect the replacement of the FDLE with the computer-delivered MPJE. Section 27.91 (relating to fees) amends examination fees and examination nomenclature. The fees will be the actual charges of the NABP to schedule a candidate to take the examination. The minor fee increase of \$10 is the result of development costs spread over all licensing jurisdictions which embraced the computer test model. Amendments to § 27.21 (relating to application for examination and licensure) change examination nomenclature and delete application procedures no longer applicable. Section 27.24 (relating to examinations and passing scores) is amended to provide transition language, delete outdated examination provisions and clarify minimum passing scores.

Public notice of intention to amend the regulations under the procedures specified in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. §§ 1201 and 1202) has been omitted as authorized under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination. All persons affected by the amendments, however, have been given actual notice of the Board's intention to amend the regulations in advance of final rulemaking under section 204(2) of the CDL.

Compliance with Executive Order 1996-1

The Board reviewed this final rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final rulemaking with proposed rulemaking omitted addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Statutory Authority

These amendments are adopted under section 812.1 of The Administrative Code of 1929 and sections 3, 6(k) and 8.2 of the act.

Fiscal Impact and Paperwork Requirements

The amendments will have no fiscal impact on the Commonwealth or its political subdivisions. Candidates for licensure by examination will be required to pay a fee to cover contract costs for the required examinations.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P. S. § 745.5(f)), on September 1, 1998, a copy of the amendments with the proposed rulemaking omitted was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition, at the same time, the amendments were submitted to the Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5(c) of the Regulatory Review Act, the amendments were deemed approved by the House and Senate Committees on September 21, 1998. IRRC met on September 24, 1998, and approved the amendments.

Additional Information

Individuals who desire information are invited to submit inquiries to the State Board of Pharmacy, Attention: Rita T. Solie, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7156.

Findings

The Board finds that:

(1) Public notice of intention to amend the regulations as adopted by this order under the procedures specified in sections 201 and 202 of the CDL, has been omitted under the authority contained in section 204(3) of the CDL, because the Board has, for good cause, found that the procedures specified in sections 201 and 202 of the CDL are in this circumstance, unnecessary, because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of examinations.

(2) Persons affected by the amendments adopted by this order have been given actual notice of the Board's intention to amend the regulations in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the regulations of the Board in the manner provided in this order is necessary and appropriate for the administration of the Board's authorizing statute.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 27, are amended by amending §§ 27.21, 27.24 and 27.91 to read as set forth in Annex A.

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

(c) The Chairperson 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 become effective immediately upon publication in the *Pennsylvania Bulletin*.

PAULA L. CASTOR, R.Ph.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa. B. 5189 (October 10, 1998).)

Fiscal Note: 16A-547. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 27. STATE BOARD OF PHARMACY PHARMACISTS

§ 27.21. Application for examination and licensure.

(a) A candidate for licensure to practice pharmacy by examination applying to take the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE) shall obtain an application for licensure from the Board, complete the application and file the application with the Board.

(b) The applicant shall include in the application proof of graduation with a B.S. or advanced degree in pharmacy granted by an ACPE accredited school or college; affidavits of all internship experience gained prior to submitting the application; and the application fee.

(c) The applicant shall also complete and submit to the Board with the completed application the examination fees and examination registration forms provided by the test administrator.

(d) Affidavits of internship experience gained after the filing of the application shall be filed before the examination date.

§ 27.24. Examinations and passing scores.

On and after March 1, 1997, but before November 1, 1998, candidates for licensure by examination are required to pass both the North American Pharmacist Licensure Examination (NAPLEX) and the Federal Drug Law Examination (FDLE), developed and administered by the National Association of Boards of Pharmacy (NABP).

(b) On and after November 1, 1998, candidates for licensure by examination are required to pass both the

NAPLEX and the Multistate Pharmacy Jurisprudence Examination (MPJE), developed and administered by the NABP.

(c) The minimum passing score on each examination will be as determined by the NABP.

FEES

§ 27.91. Schedule of fees.

An applicant for a license, certificate, permit or service shall pay the following fees at the time of application:

Application for pharmacy intern certificate	\$35
Application for pharmacist license	\$25
Effective with the March 1997 examinations:	
North American Pharmacist Licensure Examination (NAPLEX)	\$250
Federal Drug Law Examination (FDLE)	\$75
Effective with the November 1, 1998, examinations:	
North American Pharmacist Licensure Examination (NAPLEX)	\$250
Multistate Pharmacy Jurisprudence Examination (MPJE)	\$85
Certification of examination scores or internship hours	\$15
Certification of current licensure	\$10
Assistant pharmacist biennial renewal	\$120
Registered pharmacist biennial renewal	\$120
Registered pharmacist late renewal penalty	\$25
New pharmacy permit application	\$145
Reinspection of new pharmacy after failure at first inspection	\$45
Pharmacy permit change without inspection	\$15
Pharmacy permit change when inspection required	\$50
Change in pharmacy ownership or Board of Directors	\$15
Certification of valid permit	\$10
Biennial renewal of pharmacy permit	\$75
Pharmacy permit late renewal penalty	\$25

[Pa.B. Doc. No. 98-1705. Filed for public inspection October 16, 1998, 9:00 a.m.]