

# RULES AND REGULATIONS

## Title 4—ADMINISTRATION

### STATE EMPLOYEES' RETIREMENT BOARD

#### [ 4 PA. CODE CHS. 245 AND 247 ]

#### Member Purchases of Credit for Previous State Service and Re-election of Benefit Option

The State Employees' Retirement Board (Board) amends § 245.4 (relating to member purchases of credit for previous State service) and adds § 247.5a (relating to re-election of benefit option) to read as set forth in Annex A.

##### A. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

##### B. *Contact Persons*

For further information contact Jay Pagni, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 237-0236; Sharon S. Smith, Legislative Specialist, (717) 237-0227; or M. Catherine Nolan, Assistant Counsel, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 237-0392.

##### C. *Statutory Authority*

This final-form rulemaking is being made under the authority of 71 Pa.C.S. § 5902(h) (relating to administrative duties of the board).

##### D. *Background and Purpose*

Part XXV of 71 Pa.C.S. (relating to State Employees' Retirement Code) (Retirement Code) permits members of the State Employees' Retirement System (SERS) and the Public School Employees' Retirement System (PSERS) who have elected multiple service to purchase credit for previous State service that is uncredited because membership in SERS was optional at the time it was rendered. The amendment to § 245.4 expressly requires that a member who elects to purchase previous State service credit shall purchase credit for all service simultaneously. Partial purchases of previous optional State service are not allowed. The amendment also extends the time to pay for period by payroll deductions from the customary 3 years to 6 years.

The Board has long interpreted the Retirement Code to require that the purchase be comprehensive and Commonwealth Court affirmed SERS' interpretation in *Susan Shinkman v. State Employees' Retirement Board*, 958 A.2d 613 (Pa. Cmwlth. 2008). Therefore, this amendment maintains the status quo except in that it extends the payroll deduction payment period for the flexibility of the member.

Section 247.5a pertains to a member's limited right to re-elect a benefit option. The Retirement Code permits retired members who selected a retirement benefit payment option with a joint and survivor annuity to select a new benefit payment option under certain circumstances. Specifically, the Retirement Code provides that if the designated survivor annuitant predeceases the member or the member divorces or marries after retirement, the member has the right to re-elect an option. The Retirement

Code does not expressly state the time within which the member may exercise the re-election right.

The absence of a time limitation would allow a member to delay changing the option indefinitely and could result in the payment of a larger total benefit. When a member re-elects a benefit option, the member's benefit and any survivor annuity is recomputed to be actuarially equivalent to the value of the benefit remaining at the time of the recomputation. The recomputation often produces a lower monthly annuity payment to the member. By delaying the option change, the member can postpone the benefit payment reduction and could secure a larger total benefit that would be payable otherwise. In addition, the Retirement Code is silent as to whether a member who experiences multiple triggering events has a single right to change the initial benefit option or whether re-election options may accumulate, potentially allowing a member to accumulate opportunities to change the option selection, thereby further enhancing the member's benefit beyond the statutory maximum.

Section 247.5a provides the right to re-elect an option remains valid until the earlier of 7 years from the triggering event or upon the occurrence of a subsequent triggering event.

##### E. *Benefits, Costs and Compliance*

###### *Benefits*

This final-form rulemaking makes SERS' regulation regarding purchasing service credit for previous optional State service consistent with SERS' long-standing interpretation of the Retirement Code and with Commonwealth Court precedent, and eases members' payment terms. It also sets forth reasonable limitations, clarifying a member's ability to select a new benefit payment option.

###### *Costs*

This final-form rulemaking maintains the status quo, except with regard to the extended payment period. The extended payment period has no impact on the service purchase cost or applicable interest. Therefore, this final-form rulemaking has no associated cost.

###### *Compliance costs*

This final-form rulemaking will not impose additional compliance costs on State employees or employers.

##### F. *Sunset Review*

A sunset review is not applicable.

##### G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 6, 2016, the Board submitted a copy of the notice of proposed rulemaking, published at 46 Pa.B. 354 (January 16, 2016), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House State Government Committee and the Senate Finance Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC and the House and Senate Committees copies of comments received during the public comment period, as well as other documents when requested.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on July 20, 2016, the final-form rulemaking was deemed approved by the House and Senate

Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective July 20, 2016.

H. *Public Comments*

The proposed rulemaking was published at 46 Pa.B. 354. The public comment period closed on February 23, 2016. No comments were received on the proposed rulemaking. Subsequently, during a review prior to submitting the final-form rulemaking, a nonsubstantive correction was made in § 245.4(a) to add “a” between “who is” and “member of the.” No other changes have been made from the proposed rulemaking.

I. *Findings*

The Board finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code § 7.1 and 7.2.

(2) The amendments to the regulations are necessary and appropriate for the administration of the Retirement Code.

J. *Order*

The Board, acting under the Retirement Code, orders that:

(a) The regulations of the Board, 4 Pa. Code Chapters 245 and 247, are amended by adding § 247.5a and amending § 245.4 to read as set forth in Annex A.

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

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

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

DAVID R. FILLMAN,  
*Chairperson*

(*Editor’s Note:* See 46 Pa.B. 4899 (August 6, 2016) for IRRC’s approval order.)

**Fiscal Note:** Fiscal Note 31-14 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART X. STATE EMPLOYEES’ RETIREMENT BOARD**

**CHAPTER 245. CONTRIBUTIONS**

**§ 245.4. Member purchases of credit for previous State service.**

(a) A State employee who is a member of the System or a school employee who is a member of the Public School Employees’ Retirement System who has timely elected multiple service may receive service credit for all uncredited previous State service, provided the member applies for and makes the required contributions for all uncredited State service, regardless of the amount of State service previously credited.

(b) The member may make the required contributions through payroll deductions over a period of not more than 6 years.

**CHAPTER 247. BENEFITS**

**§ 247.5a. Re-election of benefit option.**

(a) A member who has filed an application for benefits and who has designated a survivor annuitant has the right to re-elect a benefit option and to nominate a beneficiary or a new survivor annuitant if, after filing the application, the designated survivor annuitant predeceases the member, the member is awarded a divorce or the member becomes married, provided the member files a timely application for option change with the Board.

(b) The member’s right to re-elect a benefit option remains valid for 7 years from the date of the death, divorce or marriage that triggered the right or until the occurrence of a subsequent triggering event, whichever occurs first. Upon the occurrence of a subsequent triggering event, a superseding right to re-elect shall begin.

(c) Upon the member’s timely filing of an application for option change, the member’s annuity will be recomputed to be actuarially equivalent to the annuity in effect immediately prior to the recomputation.

[Pa.B. Doc. No. 16-1424. Filed for public inspection August 19, 2016, 9:00 a.m.]

**Title 34—LABOR AND INDUSTRY**

**DEPARTMENT OF LABOR AND INDUSTRY**

**[ 34 PA. CODE CH. 63 ]**

**Responsibilities of Employers; Effective Date of 34 Pa. Code §§ 63.111—63.115**

Under §§ 63.111—63.115 (relating to payment by electronic transfer), certain employers are required to pay unemployment compensation contributions and reimbursement invoices by specified electronic methods. The final-form rulemaking published at 41 Pa.B. 3094 (June 18, 2011) ordered that §§ 63.111—63.115 “will take effect on the date designated by the Department in a notice published in the *Pennsylvania Bulletin* and will apply to calendar quarters and billing periods that begin on or after the effective date.”

Under section 201(a) of the Unemployment Compensation Law (43 P.S. § 761(a)) and the effective date provision published at 41 Pa.B. 3094, the effective date of §§ 63.111—63.115 is January 1, 2017.

The Department of Labor and Industry intends to distribute information and instructions to employers regarding the implementation of electronic payment.

Questions should be directed to Kevin M. Cicak, Deputy Secretary for Unemployment Compensation Programs, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121.

KATHY M. MANDERINO,  
*Secretary*

[Pa.B. Doc. No. 16-1425. Filed for public inspection August 19, 2016, 9:00 a.m.]

## Title 58—RECREATION

### GAME COMMISSION [ 58 PA. CODE CH. 133 ]

#### Wildlife Classification; Furbearers

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its July 19, 2016, meeting, amended § 133.5 (relating to furbearers) to reclassify porcupines as furbearers and also permit porcupines to be hunted with a hunting license or hunted and trapped with a furtakers license.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 46 Pa.B. 2680 (May 28, 2016).

##### 1. Purpose and Authority

The Commission amends § 133.5 to reclassify porcupines as furbearers and also permit porcupines to be hunted with a hunting license or hunted and trapped with a furtaking license, should a hunting or furtaking season, or both, be established each year.

Section 322(c)(8) of the code (relating to powers and duties of commission) specifically empowers the Commission to “[a]dd to or change the classification of any wild bird or wild animal.” Section 2102(a) of the code (relating to regulations) provides that “[t]he commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to § 133.5 are adopted under this authority.

##### 2. Regulatory Requirements

The final-form rulemaking amends § 133.5 to reclassify porcupines as furbearers and also permit porcupines to be hunted with a hunting license or hunted and trapped with a furtaking license.

##### 3. Persons Affected

Persons wishing to hunt or trap porcupines in this Commonwealth may be affected by the final-form rulemaking.

##### 4. Comment and Response Summary

There were no official comments received regarding the final-form rulemaking.

##### 5. Cost and Paperwork Requirements

This final-form rulemaking should not result in additional cost or paperwork.

##### 6. Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

##### 7. Contact Person

For further information regarding the final-form rulemaking, contact Thomas P. Grohol, Director, Bureau of

Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

#### Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

#### Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 133, are amended by amending § 133.5 to read as set forth at 46 Pa.B. 2680.

(b) The Executive Director of the Commission shall certify this order and 46 Pa.B. 2680 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

R. MATTHEW HOUGH,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-395 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 16-1426. Filed for public inspection August 19, 2016, 9:00 a.m.]

### GAME COMMISSION

#### [ 58 PA. CODE CH. 135 ]

#### Lands and Buildings; State Game Lands

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its July 19, 2016, meeting, amended § 135.41 (relating to State game lands) to prohibit the operation, control, retrieval or launching of unmanned aerial vehicles on or from lands and waters designated as State game lands.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 46 Pa.B. 3258 (June 25, 2016).

##### 1. Purpose and Authority

The Commission has observed a dramatic, if not explosive, increase in the popularity and use of unmanned aerial vehicles (commonly referred to as drones) across this Commonwealth during the past year. This increase has unfortunately resulted in unintended uses on lands designated as State game lands that compromise the purposes for which these lands were acquired. These activities range from degradation of the natural and scenic values of these lands to actual wildlife disturbance and harassment activities. The Commission is also concerned that use of these devices on State game lands may expand to interference with lawful hunting and trapping



activities in the future. The Commission amends § 135.41 to prohibit the operation, control, retrieval or launching of unmanned aerial vehicles on or from lands and waters designated as State game lands. However, the amendment specifically limits the applicability of this prohibition activities specifically authorized by the Commission in writing or any Federal, State or local government response to fire, rescue, police or other emergency matter or engagement in legitimate governmental function.

Section 721(a) of the code (relating to control of property) provides “[t]he administration of all lands or waters owned, leased or otherwise controlled by the commission shall be under the sole control of the director, and the commission shall promulgate regulations...for its use and protection as necessary to properly manage these lands or waters.” The amendments to § 135.41 are adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 135.41 to prohibit the operation, control, retrieval or launching of unmanned aerial vehicles on or from lands and waters designated as State game lands.

3. *Persons Affected*

Persons wishing to operate, control, retrieve or launch unmanned aerial vehicles on or from lands or waters designated as State game lands will be affected by this final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

5. *Cost and Paperwork Requirements*

This final-form rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Thomas P. Grohol, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 135, are amended by amending § 135.41 to read as set forth at 46 Pa.B. 3258.

(b) The Executive Director of the Commission shall certify this order and 46 Pa.B. 3258 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

R. MATTHEW HOUGH,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-396 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 16-1427. Filed for public inspection August 19, 2016, 9:00 a.m.]

**GAME COMMISSION**

**[ 58 PA. CODE CH. 135 ]**

**Lands and Buildings; Special Wildlife Management Areas**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its July 19, 2016, meeting, amended § 135.103 (relating to registration for controlled goose hunting areas) to permit the Director to designate 1 shooting day at the Middle Creek and Pymatuning Wildlife Management Areas as a veterans with disabilities only day.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 46 Pa.B. 2679 (May 28, 2016).

1. *Purpose and Authority*

Last year, the Commission held a trial run of a veterans with disabilities hunt at the Pymatuning Wildlife Management Area. The Commission determined that holding this 1-day hunt during the regular open season in the future will further improve these sportsmen the opportunity to hunt waterfowl at both of the Commission’s special wildlife management areas. The Commission received significant support and future commitment from organized sporting organizations and unaffiliated sportsmen volunteers to enhance the quality and success of this unique hunting opportunity. The Commission amends § 135.103 to permit the Director to designate 1 shooting day at the Middle Creek and Pymatuning Wildlife Management Areas as a veterans with disabilities only day.

Section 721(a) of the code (relating to control of property) provides “[t]he administration of all lands or waters owned, leased or otherwise controlled by the commission shall be under the sole control of the director, and the commission shall promulgate regulations...for its use and protection as necessary to properly manage these lands or waters.” The amendments to § 135.103 are adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 135.103 to permit the Director to designate 1 shooting day at the Middle Creek and Pymatuning Wildlife Management Areas as a veterans with disabilities only day.

### 3. *Persons Affected*

Persons wishing to hunt waterfowl at the Middle Creek and Pymatuning Wildlife Management Areas will be affected by the final-form rulemaking.

### 4. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

### 5. *Cost and Paperwork Requirements*

This final-form rulemaking should not result in additional cost or paperwork.

### 6. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

### 7. *Contact Person*

For further information regarding the final-form rulemaking, contact Thomas P. Grohol, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

### *Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

### *Order*

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 135, are amended by amending § 135.103 to read as set forth at 46 Pa.B. 2679.

(b) The Executive Director of the Commission shall certify this order and 46 Pa.B. 2679 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

R. MATTHEW HOUGH,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-398 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 16-1428. Filed for public inspection August 19, 2016, 9:00 a.m.]

## GAME COMMISSION [ 58 PA. CODE CH. 147 ]

### Deer Control; Political Subdivisions

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its July 19, 2016, meeting, amended § 147.322 (relating to application for deer control permit) to provide greater emphasis on the importance of the use of public hunting

as a prerequisite consideration in the deer control permit application and approval process.

The final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 46 Pa.B. 2678 (May 28, 2016).

### 1. *Purpose and Authority*

Section 103 of the code (relating to ownership, jurisdiction and control of game and wildlife) mandates that the Commission utilize hunting and trapping as the primary method of effecting necessary management of game, furbearer and wildlife populations. The Commission amends § 147.322 to provide greater emphasis on the importance of the use of public hunting as a prerequisite consideration in the deer control permit application and approval process.

Section 2901(b) of the code (relating to authority to issue permits) provides that “the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued.” The amendments to § 147.322 are adopted under this authority.

### 2. *Regulatory Requirements*

The final-form rulemaking amends § 147.322 to provide greater emphasis on the importance of the use of public hunting as a prerequisite consideration in the deer control permit application and approval process.

### 3. *Persons Affected*

Political subdivision or government agency applicants wishing to participate in the Commission’s deer control permit program will be affected by the final-form rulemaking.

### 4. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

### 5. *Cost and Paperwork Requirements*

This final-form rulemaking should not result in additional cost or paperwork.

### 6. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

### 7. *Contact Person*

For further information regarding the final-form rulemaking, contact Thomas P. Grohol, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

### *Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

*Order*

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.322 to read as set forth at 46 Pa.B. 2678.

(b) The Executive Director of the Commission shall certify this order and 46 Pa.B. 2678 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

R. MATTHEW HOUGH,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48-397 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 16-1429. Filed for public inspection August 19, 2016, 9:00 a.m.]

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