

Regulatory Analysis Form

This space for use by IRRC

(1) Agency
State Civil Service Commission

(2) I.D. Number (Governor's Office Use)
Fiscal Note #61-04

IRRC Number: **2234**

(3) Short Title
Non-Civil Service to Civil Service

(4) PA Code Cite
4 Pa Code §95.7

(5) Agency Contacts & Telephone Numbers
Primary Contact: **Randall C. Breon 787-5343**
Secondary Contact: **Fred Smith 783-1444**

(6) Type of Rulemaking (check one)
 Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

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

(8) Briefly explain the regulation in clear and nontechnical language.
Amends the rules of the State Civil Service Commission to permit additional promotion methods by which non-civil service state employees may compete with civil service state employees for civil service covered positions. Non-civil service state employees would be required to take and pass civil service examinations, and be appointable in accordance with the "rule of three" described by the civil service act.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.
The statutory authority for the regulation is provided by the Civil Service Act, Act of August 5, 1941 (P.L. 752, No. 286) as amended; specifically section 203 (1), 71 P.S. § 741.203 (1).

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

No law, court order or federal regulation mandates this change. However, Section 501 of the Civil Service Act permits this procedure as an option, but there previously has been no rule implementing it.

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

This change was sought by our state agency "customers". Currently the state's personnel system has a civil service covered part and a non-civil service part. Many employees are initially hired in the non-civil service part. They often work for the state for years, and sometimes are promoted from one non-civil service position to another. In many instances they reach a point where the logical progression through their occupation would call for promotion to a particular position, but that position is covered by the civil service act. Currently our rules require that such non-civil service employees compete with and be treated in the same fashion as new hires to the civil service system. The result is that some career state employees that started their employment as non-civil service reach a "ceiling" prematurely. If not for the barrier presented by our current rules, their skills, knowledge and abilities would allow for further promotion.

The regulation gives the employing agency of state government an option to consider such employees for promotion without requiring them to compete with non-employee applicants. Such non-civil service employees would be required to take and pass an examination for the title, and compete against other similarly situated state employees both civil service and non-civil service.

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

None. State agencies that currently have workforces composed of both civil service and non-civil service employees have indicated to us that the lack of an option permitting non-civil service employees to compete for promotion into civil service positions negatively impacts on employee morale.

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

Non-civil service covered state employees seeking promotion who:

- **meet the minimum qualifications for the position sought**
- **have at least two years of state service**
- **are permanent full-time or permanent part-time employees**
- **are able to pass the civil service exam for the position sought**
- **are within the "rule of three" as that phrase is defined in the civil service act**

There are currently approximately 26,000 non-civil service employees working for state government. We estimate 100-200 non-civil service employees per year might be promoted with this addition.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)
Applicants for civil service covered positions that are not state employees.

We estimate that number to be 100-200 per year.

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

Appointing authorities will be required to comply with the regulation. There are 35 state agencies under the Governor's jurisdiction that will be affected by this change. Some agencies have multiple appointing authorities for civil service act purposes.

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

A group of human resource directors from state agencies (representatives of the appointing authorities referred to above) requested a change in our policies to solve the problem addressed by these regulations and described in Item 11.

Public meetings, in accordance with Section 208 of the Civil Service Act, were held on the following dates and times: At the Western Regional Office, 1503 State Office Building, Pittsburgh on November 29, 2001 at noon; at the Eastern Regional Office, Philadelphia, on December 3, 2001 at noon; in the Public Hearing Room in the Commission's Main Office, Harrisburg, Pennsylvania on December 12, 2001 at noon and on January 15, 2002 at noon.

**We received testimony from a total of 10 persons during these four hearings:
Kerry Lee Landis, Allegheny County Bureau of Human Services, Steward, Service Employees International Union, Local 585.**

Ronnel Hamiel, Department of Public Welfare

James Poulos, Department of Public Welfare

Rose Garza Haberchak, Allegheny County Bureau of Human Services, League of Women Voters

John Greecher, Human Resource Director, Department of Revenue

Lane Kelman, Esq., Representing the Pennsylvania State Corrections Officers Association

Jacob Simonton, Human Resource Director, Department of Transportation

Robert Jacoby, Community Correction Center Monitor, Department of Corrections

Shelby Smith, Clerk 2, Department of Revenue

Michael Cuff, Clerical Employee, Department of Corrections

We also received letters or memoranda from 9 persons:

Ralph Winters, Director, Bureau of Classification and Compensation, Office of Administration

Linda Bonney, Human Resource Director, State Police

Larry Toth, Human Resource Director, Liquor Control Board

Bradley E. Mallory, Secretary, Department of Transportation

Jeffrey A. Beard, Ph. D., Secretary, Department of Corrections

Gary Scicchitano, Human Resource Director, Board of Probation and Parole

Michael Cuff, Clerical Employee, Department of Corrections

Kelly Powell Logan, Secretary, Department of General Services

Laura Zambruno, Clerk Typist 3, Department of Transportation

Section 208 provides that "...any citizen shall have the right to appear and be heard." The Act also requires that the Civil Service Commission give notice "...by furnishing twenty copies of such notice to the newspaper correspondents' office in the State Capitol and one copy of such notice to the Governor, each appointing authority and each member of the General Assembly."

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. We project no costs or savings to applicants or to state government agencies.

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

We project no costs or savings for local governments.

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

We project no measurable savings or costs associated with this regulation.

Some savings may accrue to the appointing authorities associated with a reduction in training required for employees selected via the options associated with this regulation change. These savings would occur because the selected candidate would be a current employee of state government and not require orientation/familiarization with state government processes.

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Savings						
COSTS:						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Costs						
REVENUE LOSSES:						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
Total Revenue Losses						

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

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

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

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

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

A statutory change to the civil service act was considered that would have expanded civil service coverage to non-civil service positions within state government. We concluded that a change of this scope was unlikely and was unnecessary to solve the problem.

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

We were unable to devise an alternate regulatory scheme that would solve the problem presented.

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

None.

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

We have searched and found no other state with similar merit system coverage a similar regulation.

We do not compete with other states for applicants for most of the positions covered by these proposed regulations so we neither are advantaged nor disadvantaged in relation to other states by this regulation change.

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

No other regulation is under consideration.

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

Yes, see our response to Item 16.

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

The regulation will not add to existing paperwork requirements.

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

No provisions are included in the regulation to meet any special needs groups.

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

We anticipate that we will implement the regulation within 10 days of approval by IRRC.

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

The regulation is subject to continual review. The State Civil Service Commission meetings occur monthly. Members of the general public and appointing authorities are able to suggest revisions to existing rules. In addition the staff of the SCSC and the members of the Commission review the operation of the rules to determine if modifications are necessary based on appeals filed with the SCSC and court review of our actions.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

2234

DO NOT WRITE IN THIS SPACE

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

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

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

State Civil Service Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 61-04

DATE OF ADOPTION _____

BY Paul K. Rowe

TITLE _____

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY John C. Annis

FEB 4, 2002
DATE OF APPROVAL

~~(Deputy General Counsel)~~
(Chief Counsel - Independent Agency)
~~(Strike inapplicable title)~~

Check if applicable. No Attorney General
Approval or objection within 30 days after
submission.

FINAL FORM RULEMAKING

STATE CIVIL SERVICE COMMISSION

[4 Pa. Code § 95.7] Promotion Procedure

The State Civil Service Commission (Commission) hereby adopts an amendment to Chapter 95 (relating to promotion procedures). The Commission is publishing this amendment as a notice of final rulemaking under the authority of Section 208 of the Civil Service Act as amended, 71 P.S. § 741.208.

The notice of proposed rulemaking for this amendment was published at 31 Pa. B. 6454 (November 24, 2001). Under Section 5(a) of the Regulatory Review Act, the Act of June 25, 1982 (P.L. 633, No. 181), as amended by the Act of June 25, 1997 (P.L.242, No. 24), 71 P.S. § 745.5(a), the Commission submitted a copy of the Notice of Proposed Rulemaking, to the Independent Regulatory Review Commission (IRRC) and the Chairmen of the House Labor Relations Committee and the Senate State Government Committee for review and comment. In compliance with Section 5(c), 71 P.S. § 745.5(c), the agency also provided the IRRC and the committees with copies of all comments received, as well as other documentation.

A. Comments

In preparing this final form regulation the Commission has considered all comments received from the IRRC, the Committees and the public. The Commission held four (4) public hearings to which the public was invited to comment on this proposed amendment. These hearings were held in Harrisburg on December 12, 2001 and on January 15, 2002; in Pittsburgh on November 29, 2001; and in Philadelphia on December 3, 2001. The comments received at these hearings either sought clarification of the purpose of the amendment or were favorable. The Commission received nine (9) letters commenting on the proposed amendment. All of these

comments were favorable. The Commission's only response to these written comments was to acknowledge receipt and thank the sender. No comment was received from either the House Labor Relations Committee or the Senate State Government Committee to the proposed amendment. The response of the IRRC was that they have "no objections, comments or suggestions to offer on this regulation."

No changes have been made to the published proposed rulemaking for this amendment.

B. Statutory Authority

The statutory authority for the regulation is provided by the Civil Service Act, Act of August 5, 1941 (P. L. 752, No. 286) as amended; specifically Section 203 (1), 71 P.S. § 741.203 (1).

C. Purpose and Background

A change in the procedures for promotions was requested by the state agency "clients" of the State Civil Service Commission. Currently the state's personnel system has civil service and non-civil service employees. Many are initially hired into non-civil service positions. These employees often work for the state for years, and sometimes are promoted from one non-civil service position to another. In many instances, however, they reach a point when their logical and natural career progression would call for a promotion to a particular position, but that position is one that is covered by the Civil Service Act. Currently our rules require that such non-civil service employees compete with and be treated in the same fashion as non-Commonwealth employees being newly hired into the civil service system. The result is that some career state employees who started their employment as non-civil service reach a "career ceiling" prematurely. If not for the barrier presented by our current rules, their skills, knowledge and abilities would allow for further promotion.

The regulation gives the employing agency of state government an option to consider both civil service and non-civil service employees for

promotion on an equal basis. This would amend the current rule that precludes an agency from considering non-civil service Commonwealth employees for promotion into civil service positions. In order to be promoted, such non-civil service employees would be required to take and pass an examination for the title, and compete against other similarly situated Commonwealth employees both civil service and non-civil service. This amendment will enhance the employment opportunities for all Commonwealth employees.

D. Summary of Proposal

The proposed amendment is designed to permit additional promotion methods by which non-civil service state employees may compete with civil service state employees for civil service covered positions. Non-civil service state employees would be required to take and pass civil service examinations, and be appointable in accordance with the “rule of three” described by the Civil Service Act.

E. Effective Date

The amendment will become effective upon publication in the *Pennsylvania Bulletin*.

F. Paperwork

The regulation will not add to existing paperwork requirements.

G. Fiscal Impact

This amendment will have no adverse fiscal impact on the Commonwealth or its appointing authorities.

H. Contact Person

For further information on this amendment, contact Randall C. Breon, Deputy for Operations, State Civil Service Commission, Telephone (717) 787-5343 or (717) 772-2685 (TT), P.O. Box 569, 320 Market Street, 4th Floor, Strawberry Square Complex, Harrisburg, PA 17108-0569; rbreon@state.pa.us.

The text of this amendment is available electronically through the Commission's website (<http://www.spsc.state.pa.us>).

Ronald K. Rowe

Executive Director

Fiscal Note #61-04

§ 95.7. Promotion procedure.

(a) *Promotion preference.* Vacancies in positions in the classified service shall be filled, as far as practicable, by promotion.

(b) *Methods of promotion.* Vacancies may be filled by promotion in the following ways:

(1) By appointment of probationary or regular employes of a given appointing authority or between appointing authorities from an appropriate employment list.

(2) By appointment of probationary or regular employes from an appropriate promotion list resulting from a promotional examination.

(3) By appointment of [probationary or regular] Commonwealth employes [from employes] of a given appointing authority or between appointing authorities, who appear on an appropriate employment list[.] and who meet eligibility criteria as established by the Director.

(4) By appointment of probationary or regular employes from the next most appropriate promotion list or employment list, if the official promotion or employment lists have been exhausted.

(5) By appointment of regular employes without formal examination, based upon meritorious service, seniority, and the unqualified recommendation of the employe's immediate superior and the appointing authority.

(c) *Promotion examinations.* Examinations shall be as follows:

(1) Except as indicated in this subsection, promotion examinations shall be open to regular or probationary status employes who meet the qualifications and who occupy positions within a lower maximum salary. As determined by the Director, promotion examinations may be limited to employes occupying positions in specified classes.

(2) The Director may, after consultation with the appropriate appointing authorities, establish the length of service required of candidates in the qualifying class or classes for eligibility to participate in promotion examinations.

(3) The Director will have the power to decide whether the promotion examination is to be interdepartmental or intradepartmental.

(d) *Promotion without examination.* Promotion without examination may be accomplished under the following circumstances:

(1) When a trainee in a lower level training title has successfully completed the prescribed period of training, the trainee will be promoted, without further examination, to the higher level title.

(2) When an appointing authority desires to fill a vacant position by promotion without examination, based on meritorious service and seniority, it may follow one of the following alternatives. The employe selected shall receive the unqualified recommendation of the immediate superior and the appointing authority. The alternatives are as follows:

(i) *Competitive promotion without examination.* The appointing authority shall post the vacancy, consider the eligible employes who express an interest and make the promotion decision based upon an objective review of each employe's meritorious service and seniority. Seniority for this purpose shall be the length of continuous service of an employe in the designated next lower classes if there has been no break-in-service. Eligibility for consideration for the promotion may be limited by the appointing authority to a particular geographic or program area. The posting shall, whenever possible, specify the classes determined to be next lower. Otherwise, the posting shall state that applications will be reviewed to determine if employes previously held regular status or currently hold regular status in a class for which there is a logical occupational, functional or career development relationship to the posted position or if there is a clear linkage between the required knowledges, skills and abilities of the previously or currently held class with those needed for the posted position.

(ii) *Noncompetitive promotion without examination.* The agency head will insure that the employe meets the experience and training requirements of the higher level position, and that the employe has regular status.

(3) When a classification audit reveals that a position should properly be classified to a higher level, the incumbent of the position will be promoted without examination to the higher level, if the incumbent possesses the established requirements for the higher classification.

(4) When an unskilled position in the unclassified service exists immediately below a vacancy in a position in the classified service, the incumbent of the unskilled position shall be promoted into the classified service position, if the following occur:

(i) The promotion is into a classified service position immediately above the employee's position.

(ii) The promotion is based on seniority and meritorious service.

(iii) The employee meets all of the established requirements for the higher position.

(iv) The employee satisfactorily completes a 6-month probationary period in the classified service position.

(v) A promotion shall be possible only within agencies provided full classified service coverage and listed in Article 1, section 3(d) of the act (71 P. S. § 741.3(d)).

(5) When there is a labor agreement covering the positions to which employees are to be promoted, the terms of the agreement as to promotion procedures shall be controlling.

(e) *Eligibility for promotion.* An employee whose last regular or probationary performance evaluation is unsatisfactory or otherwise fails to meet standards, will be disregarded for appointment or promotion from any list and will not be eligible for promotion without examination.

COMMONWEALTH OF PENNSYLVANIA



KATHERENE E. HOLTZINGER CONNER, Esq.
Chairman

BARBARA L. KRAUSE, Esq.
Commissioner

RONALD K. ROWE
Executive Director

STATE CIVIL SERVICE COMMISSION

P.O. Box 569
Harrisburg, PA 17108-0569

February 5, 2002

(717) 783-1444

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, Pennsylvania 17101

RE: Final Form Civil Service Commission Regulation 61-04

Dear Executive Director Nyce:

Enclosed you will find our submission of the final-form regulation referenced above. No changes have been made to the text of this regulation since it was first submitted to each of you as a proposed regulation on November 13, 2001.

This final-form regulation is being submitted simultaneously to the House Labor Relations Committee, the Senate State Government Committee and the Independent Regulatory Review Commission. No other person, entity or commentator has requested notice, containing information on this final-form regulation; therefore, no additional distribution has been made.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frederick C. Smith, Jr.".

Frederick C. Smith, Jr.
Chief Counsel

Enclosure

cc: Ronald K. Rowe, Executive Director

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

I.D. NUMBER: 64-01

SUBJECT: Promotion Procedure

AGENCY: State Civil Service Commission

TYPE OF REGULATION

Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

RECEIVED
APR 20 2001

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
	<u>Vicki Rihow</u>	HOUSE COMMITTEE ON Labor Relations
	<u>Michele Warner</u>	
	<u>Malein Keller</u>	SENATE COMMITTEE ON State Government
	<u>Malein Keller</u>	
	<u>Diana Pagan</u> 2/5/02	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

April 20, 2001