

# Regulatory Analysis Form

This space for use by IRRC

RECEIVED  
2001 NOV 14 PM 2:56  
STATE CIVIL SERVICE REVIEW COMMISSION

(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).**

## Regulatory Analysis Form

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

**No 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 which 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.**

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

**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, are scheduled to be held at the following dates and times: At the Western Regional Office, 1503 State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania 15222-1210 on November 29, 2001 at noon; at the Eastern Regional Office, 10 South 11th Street, 2nd Floor, Philadelphia, Pennsylvania 19107-3618 on December 3, 2001 at noon; in the Public Hearing Room in the Commission's Main Office at Strawberry Square Complex, 4th Floor, Bowman Worth Building, 320 Market Street, Harrisburg, Pennsylvania 17108-0569 on December 12, 2001 at noon.**

**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.**

## Regulatory Analysis Form

(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.**

## Regulatory Analysis Form

(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
<b>SAVINGS:</b>						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
<b>Total Savings</b>						
<b>COSTS:</b>						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community	None	None	None	None	None	None
Local Government	None	None	None	None	None	None
State Government	None	None	None	None	None	None
<b>Total Revenue Losses</b>						

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

## Regulatory Analysis Form

(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.**

## Regulatory Analysis Form

(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.**

## Regulatory Analysis Form

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

**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.**



CDL-1

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU**

**(Pursuant to Commonwealth Documents Law)**

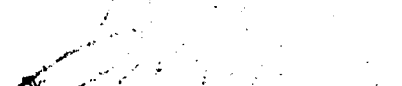
# 2234

RECEIVED  
2001 NOV 14 PM 2:56

REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

  
(Deputy Attorney General)

OCT 18 2001

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

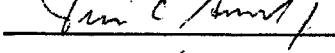
DATE OF ADOPTION \_\_\_\_\_

BY 

TITLE Executive Director

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY 

10/4/2001

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.

# PROPOSED RULEMAKING

## STATE CIVIL SERVICE COMMISSION

[4 Pa. Code § 95.7]

### Promotion Procedure

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

#### A. *Effective Date*

The proposed amendment, if approved on final-form rulemaking, will go into effect upon publication of an order adopting the amendment in the *Pennsylvania Bulletin*.

#### B. *Contact Person*

For further information on the proposed 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](mailto:rbreon@state.pa.us).

This proposal is available electronically through the Commission's website (<http://www.scsc.state.pa.us>).

#### C. *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).

#### D. *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 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 replace 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. The goal is to enhance the employment opportunities for all Commonwealth employees.

#### *E. 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.

#### *F. Paperwork*

The regulation will not add to existing paperwork requirements.

#### *G. Fiscal Impact*

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

## H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendment to 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, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments may be submitted by facsimile to (717) 783-8736.

Comments also may be submitted electronically at [rbreon@state.pa.us](mailto:rbreon@state.pa.us). A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgement of electronic comments is not received by the sender within two working days, the comments should be retransmitted to ensure receipt.

The State Civil Service Commission invites comments from interested persons, agencies and organizations at its public hearings on the proposed amendment to be held as follows:

At the Western Regional Office, 1503 State Office Building,  
300 Liberty Avenue, Pittsburgh, Pennsylvania 15222-1210  
November 29, 2001  
Time: noon

At the Eastern Regional Office, 10 South 11th Street, 2nd Floor,  
Philadelphia, Pennsylvania 19107-3618  
December 3, 2001  
Time: noon

At the Public Hearing Room in the Commission's Main Office  
Strawberry Square Complex, 4th Floor, Bowman Worth Building,  
320 Market Street, Harrisburg, Pennsylvania 17108-0569  
December 12, 2001  
Time: noon

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 employees without formal examination, based upon meritorious service, seniority, and the unqualified recommendation of the employee'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 employees who meet the qualifications and who occupy positions within a lower maximum salary. As determined by the Director, promotion examinations may be limited to employees 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 employe's position.

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

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

(iv) The employe 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 employes are to be promoted, the terms of the agreement as to promotion procedures shall be controlling.

(e) *Eligibility for promotion.* An employe 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

RONALD K. ROWE  
Executive Director

BARBARA L. KRAUSE, Esq.  
Commissioner

STATE CIVIL SERVICE COMMISSION

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

November 13, 2001

(717) 783-1444

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

**RE: Proposed Civil Service Commission Regulation 61-04**

Dear Executive Director Nyce:

Enclosed you will find the proposed regulation to be published in the November 24, 2001 edition of the Pennsylvania Bulletin.

Sincerely,

A handwritten signature in black ink, appearing to read "Frederick C. Smith, Jr." with a stylized flourish at the end.

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: 61-04

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

2001 NOV 14 PM 2:56  
REVIEW COMMISSION

RECEIVED

**FILING OF REGULATION**

DATE

SIGNATURE

DESIGNATION

11/14/01

*Paul J. Clymer*

HOUSE COMMITTEE ON State Government

11/14/01

*Valerie Keller*

SENATE COMMITTEE ON State Government

11/14/01

*E. Puzan*

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL

11/14/01

*William J. Moran*

LEGISLATIVE REFERENCE BUREAU

April 20, 2001

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

**ID. NUMBER:** 61-04

**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  
 2001 NOV 14 PM 12:06  
 REGULATORY REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
11/14/01	<i>Paul Clymer</i>	HOUSE COMMITTEE ON <del>State Government</del>
11/14/01	<i>Linda Grabowski</i>	HOUSE COMMITTEE ON Labor Relations
11/14/01	<i>Valerie Keller</i>	SENATE COMMITTEE ON State Government
11/14/01	<i>E. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
11/14/01	<i>Michael Hoo</i>	LEGISLATIVE REFERENCE BUREAU

April 20, 2001