

Regulatory Analysis Form

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(RAF-Act 140.doc) STATEWIDE
REGULATORY COMMISSION

(1) Agency
State Civil Service Commission

(2) I.D. Number (Governor's Office Use)
Fiscal Note #61-05

IRRC Number: **2379**

(3) Short Title
Act 140 of 2002 Implementation

(4) PA Code Cite
4 Pa code §§ 91.3-91.4, 93.1, 95.1-95.1a, 95.2, 95.6-95.7, 95.14, 95.21-95.23, 95.32-95.33, 95.41-95.44, 95.51-95.52, 95.61, 95.63, 99.1, 99.11, 99.13, 99.22, 99.26, 101.21, 101.31-101.32, 101.41, 105.1, 105.3, 105.11, 105.13, 105.14a, 110.24-110.25, 110.28, and 105.14d.

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Randall 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 comply with changes made to the Civil Service Act by Act 140 of 2002, to bring the Regulations governing civil service hearing procedures into conformity with current hearing practices, and to clarify existing Regulations.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.
The statutory authority for these regulations is provided by the Civil Service Act, Act of August 5, 1941 (P.L. 752, No. 286), as amended; 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.

The regulations would amend the Rules of the Civil Service Commission to comply with changes to the Civil Service Act as a result of Act 140 of 2002.

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

Act 140 of 2002 amended the Civil Service Act providing for full-time State Civil Service Commission members; further providing for members' salaries and meeting times; providing for delegation of authority to director; further providing for residency and for recordkeeping requirements; eliminating the certification of payrolls; requiring members to submit annual report; revising the records retention period; deleting citizenship and oath requirements; further providing for the filling of vacancies; requiring citizenship to be the deciding factor in a case of equal qualifications; eliminating certain requirements for promotion without examination; further providing for the distribution of public notice of examinations and requirements for maintaining eligibility lists and for the procedure for certain eligibles who waive consideration for a promotion, for procedures for filling a position, for the requirements of the probationary period; providing for the expansion of the authority of the director to approve temporary assignments; eliminating certain performance standards; requiring probationary performance evaluations and evaluation forms; further providing for a period of removal from eligibility lists; authorizing the commissioner to impose penalties; providing copies and notices to the director; and making a repeal. Additionally, amendments were needed to our hearing procedures to conform with actual practice.

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

None. These are essentially personnel rules.

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

Applicants for positions within the classified service, current classified service employees, agencies regulated by the Civil Service Act and the Commission will benefit from these changes. Some examples of those benefits: applicants will not be required to have applications notarized (estimate 50,000 per year), employees pursuing promotion without examination will not be required to seek the unqualified recommendation of their current supervisor (estimate 2,000 per year), agencies will not be required to provide copies of notification letters sent to its employees to the Commission (estimate 8,000 copies per year), the Commission will be permitted to discard unneeded records and documents.

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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.)

Not applicable. These regulations are being promulgated to comply with Act 140 of 2002. Act 140 permits classified service employees to be suspended for longer periods than was formerly permitted. However, we believe fewer of these employees will now be discharged than would occur under the current regulations.

(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.)

Applicants (estimate 50,000 per year), classified service employees (approximately 60,000) and agencies with classified service employees (35 state government agencies and 300 local government agencies) will be required to comply with these regulations.

(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.

These regulations are being promulgated to comply with Act 140 of 2002. Human Resource Directors of State Agencies were provided drafts of these regulations in May, 2003. Comments from those directors and agency chief counsels, through the Office of General Counsel, were considered, and in many instances incorporated into these regulations. See also item (27) below.

(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.

Not applicable. These regulations are being promulgated to comply with Act 140 of 2002. However, we believe that some savings will be realized by applicants since our applications will no longer require notarization, and by agencies since copies of heretofore required notification letters will no longer be required, thus reducing paperwork requirements and associated mailing costs.

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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.

Not applicable. These regulations are being promulgated to comply with Act 140 of 2002. However, we believe there will be some hard to estimate savings realized by local government agencies that contract with the SCSC for services. The existing regulations require that agencies provide copies of various notification letters and unqualified recommendation forms to the SCSC. These regulations remove the requirements for copies of many notification letters and the unqualified recommendation form.

(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.

Not applicable. These regulations are being promulgated to comply with Act 140 of 2002.

However, we believe that there will be some 'hard to estimate' savings by state government agencies. The existing regulations require that agencies provide copies of various notification letters and unqualified recommendation forms to the SCSC. These regulations remove the requirements for copies of many notification letters and the unqualified recommendation form.

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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:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0					
Local Government	\$0					
State Government	\$0					
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:	\$0					
Regulated Community	\$0					
Local Government	\$0					
State Government	\$0					
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0					
Regulated Community	\$0					
Local Government	\$0					
State Government	\$0					
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

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

Some hard to estimate savings will be realized by state agencies and local government agencies. The existing regulations require that agencies provide copies of various notification letters and unqualified recommendation forms to the SCSC. These regulations remove the requirements for copies of many notification letters and the unqualified recommendation form. Since we believe the amount of savings to be small, we listed no savings.

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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
N/A	N/A	N/A	N/A	N/A

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

Not applicable. These regulations are being promulgated to comply with Act 140 of 2002.

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

Not applicable. These regulations are being promulgated to comply with Act 140 of 2002.

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

Not applicable. These regulations are being promulgated to comply with Act 140 of 2002.

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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.

Not applicable. These regulations are being promulgated to comply with Act 140 of 2002 and are unique to Pennsylvania.

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

Not applicable. These regulations are being promulgated to comply with Act 140 of 2002. They will not competitively disadvantage Pennsylvania in any way.

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

Not applicable. These regulations are being promulgated to comply with Act 140 of 2002. The only regulations that will be affected are those that are expressly amended to conform to the new legislation.

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

Human Resource Directors of State Agencies were provided drafts of these regulations in May, 2003. Comments from those directors and their agency chief counsels, through the Office of General Counsel, were considered, and in many instances incorporated into these regulations.

The SCSC held public hearings in Philadelphia (Noon, November 03, 2003), Pittsburgh (Noon, October 20, 2003) and Harrisburg (8:30 a.m., October 14, 2003) to comply with a provision (§ 208) of the Civil Service Act, 71 P.S. § 741.208, that requires a public hearing before amendments to its rules are permitted. The hearings were advertised in the October 4, 2003 edition of the Pennsylvania Bulletin and in the newspaper of general distribution in the area of the hearings—Harrisburg Patriot News, October 4, 2003, the Pittsburgh Post Gazette, October 18, 2003 and the Philadelphia Inquirer, October 29, 2003. A memorandum announcing the scheduled hearings was sent to each member of the General Assembly and the Governor on October 1, 2003. The Commission issued a press release dated October 1, 2003 and announced the hearings beginning September 26, 2003 on its website. No comments were received from the public during any of these three hearings.

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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.
These regulations will reduce reporting requirements; see Sections 13, 17, 19 and 20 of this form.

(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.
Not applicable. These regulations are being promulgated to comply with Act 140 of 2002.

(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?
Immediately upon the completion of IRRC review.

(31) Provide the schedule for continual review of the regulation.
These regulations are subject to continual review by the Commission. The State Civil Service Commission conducts a public meeting every month. 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 may be necessary based on appeals filed with the SCSC and court review of our decisions.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)**

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REVIEW COMMISSION

2379

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:

PA State Civil Service Commission
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 61-05

DATE OF ADOPTION December 9, 2003

BY [Signature]

TITLE Executive Director

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY [Signature]

December 9, 2003

DATE OF APPROVAL

~~CHIEF COUNSEL~~
(Chief Counsel - Independent Agency)
(Strike inapplicable title)

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

STATE CIVIL SERVICE COMMISSION

4 PA. CODE

PREAMBLE

The Pennsylvania State Civil Service Commission (SCSC), pursuant to the authority provided by Section 203 of the Civil Service Act, Act of 1941, Aug. 5, P.L.752, as amended, (71 P.S. § 741.203(1)) amends various provisions of Chapter 95, 4 Pa. Code, as described in detail below, to read as set forth in Annex A to this Preamble.

Omission of Proposed Rule Making

Under authority of Section 204(1) and 204(3) of the Commonwealth Documents Law (45 P.S. §§ 1204(1) and 1204(3)), SCSC has omitted the procedures for Proposed Rule Making. As is more fully explained below, Proposed Rule Making has been omitted because:

- a) Civil Service Rules regulate the state classified service only and are, therefore, either personnel rules or related to agency procedure or practice;
- b) Most of the amendments as described below change existing regulations to conform with the new requirements of Act 140 of 2002, which amended the Civil Service Act, or the Americans with Disabilities Act, and are therefore the result of self executing legislation;
- c) The other amendments as described below, update SCSC administrative practices and procedures with regard to, *inter alia*, record keeping, managing eligible lists and conducting administrative hearings; and
- d) Public comment is unnecessary because the changes are legislatively mandated and/or reflect established, ongoing agency personnel practices and procedures, and SCSC has already sent copies of the proposed changes to its client state agencies, solicited their comments and incorporated many of their suggestions, including those forwarded to the Commission by the Office of General Counsel. In addition, pursuant to Section 208 of the Civil Service Act (71 P.S. § 741.208) SCSC has advertised and held public hearings in Harrisburg (October 14, 2003), in Pittsburgh (October 20, 2003) and in Philadelphia (November 3, 2003) seeking public comment. Despite advertising these meetings and posting the proposed amendments on its web page along with the meeting dates and times, no member of the public appeared to comment at any of these meetings. Therefore, the Commission in good faith has determined that the solicitation of additional public comments is unnecessary.

Description and Reasons for Amendments

The following provisions in 4 Pa. Code are affected, or added by these amendments:

- § 91.3. The definitions of various personnel terminology (Demotion, Permanent Position, Temporary Position, Probationary Period, Promotion, and Promotion Without Examination) have been slightly modified to eliminate confusion and/or to conform to changes in definitions that were made in Act 140 of 2002. A definition of Regular Status, which was not previously defined in this section, has been added.
- § 91.4. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 93.1. This rule change clarifies that the SCSC has the authority to reschedule a public meeting upon “appropriate public notice.”
- § 95.1. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 95.1a. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 95.2. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 95.6. This rule is placed in Reserve as it is not currently being used by SCSC for any classifications.
- § 95.7. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002 and to conform to the Commission’s present practice and procedure governing the use of the Unqualified Recommendation for promotion candidates.
- § 95.14. This rule is incidentally modified for clarification only.
- § 95.21. This rule is modified to clarify that the Director has the authority to postpone, cancel, and reschedule civil service examinations as necessary.
- § 95.22. This rule is incidentally modified for clarification only.
- § 95.23. This rule is modified to clarify that most civil service testing is by computer and, therefore, paperless.
- § 95.33. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 95.41. This rule was modified incidentally for clarification and also to conform to current SCSC practices and procedures.
- § 95.42. This rule is incidentally modified for clarification and to eliminate confusion. Eligible lists are constantly changing as things are added and removed. This process is done electronically by computer and any eligible list that existed at any point in time is able to be reconstructed electronically thereafter. As formerly worded the rule

implied that there is a single, unified eligible list that results from a single examination. In the age of computerized testing, this is no longer the case.

- § 95.43. This rule is modified incidentally for clarification. Almost all civil service testing today is by computer and, therefore, paperless.
- § 95.44. This rule is modified incidentally for clarification. Almost all civil service testing today is by computer and, therefore, paperless.
- § 95.51. This rule is modified to clarify who is a “successful candidate.” The old rule did not define this term adequately.
- § 95.52. This rule is modified to clarify that eligible lists, as described in Section 95.42 above, are now being prepared electronically (on computer). Client agencies have been given access to these lists.
- § 95.61. This rule is modified to clarify that eligible lists are now electronic and are changing constantly.
- § 95.63. This rule is modified to clarify that eligible lists are now electronic and are changing constantly.
- § 97.3. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 97.4. This rule was modified incidentally to eliminate confusion. The change is not substantive.
- § 97.12. This rule was modified to clarify that an eligible that has three pass overs can immediately re-examine for the position. This conforms to existing practice and procedure of the SCSC.
- § 97.13. This rule was modified to clarify that there is already in place an established procedure for this process.
- § 97.31. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 97.33. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 97.37. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 97.38. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 97.39. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 97.51. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.

- § 97.63. This rule was modified to clarify that you must already be a member of the classified service to work out-of-class in another position in the classified service. This conforms to SCSC practice and procedure.
- § 99.1. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002. This requirement was removed by Act 140.
- § 99.13. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 99.22. This rule was modified to clarify that the form described is no longer printed by SCSC as it is available for downloading and printing online.
- § 99.26. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 101.21. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 101.31. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 101.32. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 101.41. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002. This requirement was removed by Act 140.
- § 105.1. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002.
- § 105.3. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002. This requirement was removed by Act 140.
- § 105.11. This rule was modified expressly to conform to the changes enacted in Act 140 of 2002. This requirement was removed by Act 140.
- § 105.13. This rule was modified to conform to the current practices and procedures of SCSC to utilize a Hearing Examiner to hear some civil service appeals. The SCSC has the authority to employ Hearing Examiners to conduct its hearings. *Bosjak v. State Civil Service Commission*, 781 A.2d 1280 (Pa. Commw. 2001).
- § 105.14a. This rule was modified to conform to the current SCSC practices and procedures in the use of subpoenas. The Commission's authority to issue subpoenas is established by Section 209 or the Civil Service Act (71 P.S. § 741.209).
- § 105.14d. This rule has been added to set forth the SCSC's current practices and procedures for holding and conducting pre-hearing conferences for civil service appeals. The Commission's authority to hold pre-hearing conferences is provided by 1 Pa. Code § 35.113.

- § 110.24. This rule was modified to recognize that many “records” are now computerized and, therefore, may not necessarily be recorded on “paper.”
- § 110.25. This rule was modified to recognize that many “records” are now computerized and, therefore, may not necessarily be recorded on “paper.”
- § 110.28. This rule was modified to conform to current SCSC practices and procedures pursuant to its existing policy on records retention. The modification also clarifies that SCSC records may be either in hardcopy or stored electronically.

Paperwork

The amended regulations will reduce existing paperwork requirements by eliminating the need for appointing authorities to send unnecessary copies of notices to the State Civil Service Commission.

Fiscal Impact

The amended regulations will have no adverse fiscal impact on the Commonwealth or its appointing authorities and should result in cost savings to both the appointing authorities and applicants for civil service examinations.

Effective Date

The amended regulations, if approved on final-form (omitted) rulemaking, will go into effect upon publication of an order adopting the amendment in the Pennsylvania Bulletin.

Fiscal Note #61-05

**Ronald K. Rowe
Executive Director**

Annex A

Subpart A. RULES OF THE CIVIL SERVICE COMMISSION

* * * * *

CHAPTER 91. GENERAL PROVISIONS

* * * * *

§ 91.3. Definitions.

Words, terms and phrases, when used in this part, have the meaning set forth in section 3 of the act (71 P. S. § 741.3), unless the context clearly indicates otherwise. In addition, the following terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Class or class of positions (***also known as job(s)***)—A group of positions in the classified service which are sufficiently similar in respect to the duties and responsibilities that the same descriptive title may be used for the position, the same requirements as to experience, knowledge, and ability are demanded of incumbents, the same tests of fitness may be used to choose qualified appointees, and the same schedule of compensation may be made to apply with fairness under like working conditions.

* * * * *

Demotion—[A change to a position in a class carrying a lower maximum salary,] **The voluntary or involuntary movement of an employee to a class assigned to a pay range with a lower maximum salary,** except as provided for in § 99.41 (relating to effect of reclassifications).

* * * * *

* * * * *

Probationary period—A preliminary period of employment [prior to permanent appointment of an employee for the purpose of determining fitness for permanent employment.] the purpose of which is to determine the fitness of an employee for regular status.

Promotion—The movement of an employee to another [a position in a] class [which carries] in a pay range with a higher maximum salary.

Promotion examination—An examination for positions in a particular class, admission to which is limited to employees in the classified service[**who have held a position in another class**].

* * * * *

Regular status— Standing achieved by a classified service employee who has successfully completed a probationary period.

* * * * *

Temporary position—A position in the classified service which arises out of temporary pressure of extra work for a period of [less than 12 months.] twelve months or less.

* * * * *

§ 91.4. Classified service coverage.

(a) *Coverage.*

(1) Existing and newly established positions in the agencies identified in section 3(d) of the act (71 P. S. § 741.3(d)) shall be in the classified service unless specifically exempted by action of the Commission.

(2) Positions in classes which are or have been determined to be professional or technical by action of the Executive Board, or which are directly or indirectly derived from the classes, shall be in the classified service.

(b) *Exemptions.*

(1) Requests for exemption of positions from the classified service under section 3(c) of the act shall be submitted in writing to the Director. The Director, after investigation, will recommend approval or denial of the exemption request to the Commission, which will make the final determination of classified service coverage.

(2) Criteria which shall be met for exemption are as follows:

(i) *Under section 3(c)(1) of the act.* Department heads and deputy Department heads are automatically exempt and require no Commission approval. Other positions will be reviewed to determine whether they fully participate in policy development, at the level required for exemption. Factors to be considered include such things as whether: the incumbent regularly and customarily meets with the Department head in formulating the general policies of the Department; the position is considered to be part of the Department's top management team; the position is responsible for recommending or approving policies which govern one or more major program areas having major impact on attainment of the goals and objectives of the Governor or the Department head; the position is expected to exercise discretionary powers in carrying out major agency missions; and the position involves development and advocacy of the agency's legislative programs. In addition, the Commission will consider the position's placement in the organization, lines of authority, reporting relationship within the agency structure, classification standards, the pay level allocated to the position and the independence of action inherent in the position.

(ii) *Under section 3(c)(2) of the act.* Members of boards and commissions are automatically exempt and require no Commission approval.

(iii) *Under section 3(c)(3) of the act.* Appointing authorities shall identify and notify the Director, in writing, which positions are designated as personal aides or confidential and provide the Director with a copy of the current job description for each position so identified. Commission approval is not required. Positions exempted under this subsection shall be assigned work as personal aides or assistants and not as program supervisors or managers.

(iv) *Under section 3(c)(4) of the act.* Appointing authorities shall request exemptions in writing. Justification shall include specific reasons why the position should be excluded from the classified service, as well as the period of time for which the exemption is requested.

(v) *Under section 3(c)(5) of the act.* Positions in attorney classifications are automatically exempt and require no Commission approval.

(vi) *Under section 3(c)(6) of the act.* Positions in classes which meet the definition of "unskilled" in the act are automatically exempt and require no Commission approval.

(vii) *Under section 3(c)(7) of the act.* The appointing authority shall identify and notify the Director in writing of the professional positions attached to the department head's office which function **[as] in press and/or public relations, [or both, and] legislative liaison[s] or development of executive policy**, and provide the Director with a copy of the current job description for each position so identified. Commission approval is not required.

* * * * *

CHAPTER 93. CIVIL SERVICE COMMISSION AND EXECUTIVE DIRECTOR

* * * * *

§ 93.1. Meetings of Commission.

(a) The Commission will meet at least once each month, consistent with the act, at its offices in Harrisburg, Pennsylvania, or at other places as will best serve the public interest. **Meetings may be cancelled with appropriate public notice.**

(b) One member of the Commission will be designated as secretary by the Chairman.

(c) Not less than 48 hours' notice of the date, time and place of a meeting shall be given to each member of the Commission.

(d) The Director will be responsible for preparing the agenda of the Commission meeting.

(e) Minutes of Commission meetings will be filed and maintained in the executive office of the Commission.

* * * * *

CHAPTER 95. SELECTION OF EMPLOYEES FOR ENTRANCE TO, OR PROMOTION IN, THE CLASSIFIED SERVICE

* * * * *

EXAMINATIONS REQUISITE FOR APPOINTMENT AND PROMOTION

§ 95.1. Application requirements.

(a) *Submission of applications.* Applications [are] required of a candidate for entrance to, or promotion in, the classified service, [and] shall be made [on forms] **in a format prescribed [and furnished] by the Director[,] and shall contain a statement made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, verifying the truthfulness of all responses contained thereon.**

(1) *Completeness of application.* An application shall be complete. An incomplete application may be rejected.

(2) *Timeliness of applications.* An application shall be submitted by the date and time **if** specified in the public notice of examination. An application received or bearing a postmark prior to midnight of the final filing date will be deemed filed within the time limit.

(b) *Evidence of merit and fitness.* The Director may require an applicant to supply information relevant for determining the possession by the applicant of the minimum requisites for appointment or promotion. The Director may also require an applicant to supply certificates and other appropriate documents from citizens, physicians, public officers, school officials, employers and others having knowledge of the applicant as will be relevant in assessing the applicant's fitness and qualifications for appointment or promotion.

(c) *Limitations on inquiry.* Limitations shall be as follows:

(1) Except as provided in paragraphs (2) and (3), no questions in the application **[form]** nor in the examination will require the applicant to provide information concerning the sex, age, race, color, religious creed, ancestry, national origin, political affiliations, labor union affiliations, **[or] political opinions[,] or disability**, nor will the information be required in another manner by a member, official or employee of the Commission or of an appointing authority in connection with the examination, certification or appointment of an applicant for another purpose.

(2) The Director may make inquiries of an applicant's age or national origin, or both, as is necessary to comply with Federal and State statutes and this part.

(3) The Director may make inquiries of applicants regarding sex, race, age and similar factors, as are necessary to conduct research required to validate selection procedures or to comply with State and Federal regulations on equal opportunity. Applicants shall be informed that response to questions is not mandatory.

(d) *Rejection of applicants and disqualification of eligibles.* The Director will not be required to examine, nor after examination, to certify an eligible applicant who is found to lack the established or announced requirements for admission to the examination or for appointment from an entrance or promotion list. The

Director, with the approval of the Commission, may refuse to examine an applicant, or after examination, to certify an eligible applicant who:

(1) Is addicted to the use of narcotics, or intoxicating beverages when the addiction renders the applicant unable to competently perform the duties of the position sought.

(2) Has been guilty of a crime or of conduct which renders the eligible unfit or unsuitable for the position sought.

(3) Has been dismissed from employment for incompetency or misconduct when the incompetency or misconduct renders the applicant unfit or unsuited for the position sought.

(4) Has a physical or mental disability which renders the applicant unfit or unsuited **[for the performance of the]to perform the essential functions of the position's** duties and responsibilities **[of the positions involved.]with or without reasonable accommodation.**

(5) Has made a false statement, or omitted a material fact, or practiced, or attempted to practice, deception or fraud in application, examination, in securing eligibility, or seeking appointment.

(e) *Discretionary acceptance of applications.* The Director may authorize the acceptance of applications filed after the announced final filing date if sufficient need exists for additional applicants, and if acceptance is uniformly applied to all applications for the same examination filed on the same date or on an earlier date.

(f) *Notice of rejection or acceptance of applications.* Whenever an application has been rejected prior to the holding of the examination, notice thereof, with the reasons for the rejection, shall be given to the applicant. Applicants may be admitted to the examination conditioned upon establishing eligibility within a reasonable time after the date of the examination, in which case, notice of the conditional admittance will be given to the applicant involved. Notice of the acceptance of an application or notice to an applicant being admitted to the examination will be given in sufficient time for the applicant to arrange to be at the examination site at the time specified.

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§ 95.1a. **United States** Citizenship [requirements.

Applicants shall be citizens of the United States or aliens who may lawfully be employed in the United States. The Director may designate specific positions or classes for which United States citizenship is required.]To the extent permitted by law, when all applicants for appointment or promotion

to a position in the classified service are equally qualified, the appointing authority will prefer United States citizens over those who are not.

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§ 95.2. Residence requirements.

(a) *Residen[ce]t defined.* [Residence is the place or locality at which an applicant resides and has manifested an intent to continue to reside. Factors which provide evidence of intent to maintain residency in this Commonwealth include the following:] **A resident is a person who resides, and who has manifested the intent to continue to reside in Pennsylvania or a former resident of Pennsylvania who meets the criteria in (2)(i) or (2)(ii) of this provision.**

(1) Evidence of intent to continue to reside in Pennsylvania includes but is not limited to the following:

- Rent, lease or purchase of a property which the applicant has made a primary residence **in Pennsylvania.**

[(2)] - Payment of Pennsylvania [S]state and local taxes.

[(3)] - Registration of personal property, such as bank accounts, stocks, and bonds and automobiles within [this Commonwealth] Pennsylvania.

[(4)] - Possession of a current Pennsylvania [motor vehicle operator] driver's license.

[(5)] - Current registration to vote in [this Commonwealth] Pennsylvania.

(2) Former residents of Pennsylvania who relocated out of state for academic or employment purposes, shall establish Pennsylvania residency within six months of beginning employment in the classified service and must have:

(i) graduated from a public, private or nonpublic secondary school in the Commonwealth within five years of applying for a position in the classified service; or

(ii) attended a public, private or nonpublic school in Pennsylvania at least eighty percent of the time while enrolled in grades one through twelve and attended such school within five years of applying for a position in the classified service.

(b) *Application.* Application requirements are as follows:

(1) Persons appointed, promoted or reinstated to positions in the classified service shall be legal residents of this Commonwealth, unless residency has been waived. The provisions in this paragraph do not apply to persons who previously held regular civil service status and are returned to employment from an approved leave of absence without pay or through mandatory reemployment or contractual recall or placement rights.

(2) The Director, upon submission by an appointing authority of satisfactory justification, may limit certification for appointment or promotion to eligibles who are residents of a county or other administrative district. The limitations will not be imposed for a class for which residence in this Commonwealth has been waived.

(3) In the absence of, or upon exhaustion of, a county or other administrative district list, the Director may certify residents of contiguous counties or districts or of the entire Commonwealth as deemed appropriate by the Director.

(4) If an eligible changes residence from one district or county to another district or county of this Commonwealth, the Director may, upon request, transfer the person's eligibility to the other existing promotion or employment list.

(c) *Waiver.* When it appears that there is an inadequate supply of well qualified residents of this Commonwealth available for a particular occupation, the Director, upon request by one or more appointing authorities, may waive the residency requirement for a position, a class or a group of classes.

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§ 95.6. [Announcement of special limitations.

Whenever special limitations of age, sex or medical or physical standards apply to a class for which an examination is announced, such limitations shall be specified or referred to in the announcement.] **Reserved.**

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§ 95.7. Promotion procedure.

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

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

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

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

(3) By appointment of Commonwealth employees 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 employees 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[,] **and** seniority[, **and the unqualified recommendation of the employee's immediate superior and the appointing authority**].

[(c)](b) *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)](c) *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 employee 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 employees who express an interest

and make the promotion decision based upon an objective review of each employee's meritorious service and seniority. Seniority for this purpose shall be the length of continuous service of an employee 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 employees 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 employee meets the experience and training requirements of the higher level position, **[and that the employe] has regular status, and meets the meritorious service and seniority requirements.**

(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)](d)~~ *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.

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NATURE OF EXAMINATIONS

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§ 95.14. Use of class specifications in examinations.

(a) *Basis for examinations.* The classification standards for a class, as adopted by the Executive Board, shall constitute a primary basis and source of authority for the content and level of difficulty of the examinations for the class and for the evaluation of the qualifications of applicants for examinations. Supplemental job information, obtained through job analysis, may be used as a further basis for examinations and evaluation standards. The examination content for classes peculiar to one agency shall be discussed with the appointing authority. In cases of difficult recruitment, the Director, with the cooperation of the appointing authority, may use discretion in interpreting minimum experience and training and in accepting equivalent experience and training.

(b) *Implied qualifications.* Qualifications commonly required of all employees shall be implied, even though not specifically set forth in the classification standards, as follows:

- (1) Freedom from physical or mental defects which would render the employee unfit for competent performance[.] **with or without reasonable accommodation.**
- (2) Good moral character, honesty, sobriety, industry, loyalty and dependability.
- (3) Possession of a valid appropriate **[motor vehicles operator] driver's** license, where driving or parking motor vehicles is necessary to carry out work assignments.
- (4) Possession of suitable instruments, tools, or equipment where they are customarily furnished by the employee in a profession, skilled trade or other occupation.
- (5) Residence, sex, and similar qualifications imposed by law or rule.

(c) *Lines of promotion.* Lines of promotion, when indicated in the classification standards, will not be considered as barring other lines of promotion, unless so specified in the public announcement of examinations.

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CONDUCTING EXAMINATIONS AND RATING COMPETITORS

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§ 95.21. Scheduling of examinations.

(a) The Director, in authorizing the times and places of examinations, shall give due consideration to the convenience of the candidates, consistent with the needs of the service.

(b) The Director will establish and notify candidates of procedures for rescheduling and retesting when appropriate.

(c) The Director may authorize postponement, cancellation, and/or rescheduling of examinations.

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§ 95.22. Administration and scoring of examinations.

(a) *Administrators.* The Director shall appoint and fix the compensation of test administrators, proctors and other assistants required to administer examinations.

(b) *Notice of examinations.* A candidate will be notified of admittance or nonadmittance to examinations. Applicants shall be given a delayed examination in place of the one for which they failed to appear if the failure to appear was caused by an act or omission of the Commission's staff. Delayed examinations also may be authorized for other appropriate reasons.

(c) *Cancellation of part of an examination.* Whenever the Director finds that it is impracticable or unnecessary, for reasons which shall be made part of the examination record, to hold any part of a multipart examination the Director may cancel that part or parts and reassign the [announced] weights, in an equitable manner, to the remaining part or parts.

(d) *Retaking examination.* A candidate may be permitted to retake an examination. Standing on an eligible list will be determined by the score received on the most recent examination.

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§ 95.23. Security of competitive standards.

(a) *Maintenance of competitive conditions.* The Director will establish appropriate procedures to insure that all applicants for an examination are given equal opportunity to demonstrate their relative merit and fitness.

(1) The Director will establish proper precautions to prevent an unauthorized person from securing in advance questions or other materials to be used in a test, unless the questions or materials are available to all applicants.

(2) When the conditions under which a test is held have materially impaired its competitive nature or worth in assessing qualifications, the Director will order that the tests or appropriate sections thereof, if severable, be cancelled. New tests or parts of tests may be substituted therefore, if possible.

(b) *Anonymity of candidates.* The Director will establish appropriate procedures to insure that the identity of candidates in all competitive tests do not adversely affect the objective rating or scoring of the candidates' examinations [papers].

(c) *Cheating on examinations or seeking undue advantage.* The Director will disqualify an applicant who impersonates another or has another person impersonate the applicant in connection with an examination, or who uses or attempts to use unauthorized aids or assistance, including copying or attempting to copy from or helping or attempting to help another applicant in any part of an examination, or who otherwise seeks to attain undue advantage for self or others in connection with the examination. In addition, the Director will refer these cases to the Commission for determination of possible violations of sections 902 and 903 of the act (71 P.S. § § 741.902 and 741.903).

(d) *Examination materials.* A candidate in an examination may not copy, record or transcribe an examination question or answer, or remove from the examination room a question sheet, answer sheet or booklet, scrap papers, notes or other papers or materials related to the content of the examination. A candidate will be notified of these requirements, and no examiner, proctor, monitor or other person charged with the supervision of a candidate or group of candidates will have authority to waive it. The Director may disqualify a candidate or refuse to certify an eligible person who violates this section. In addition, the Director will refer these cases to the Commission for determination of possible violations of sections 902 and 903 of the act.

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PUBLIC NOTICE OF EXAMINATIONS

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§ 95.32. Special assistance in recruitment.

The Director shall encourage interested appointing authorities and agencies, public and private, to aid in the recruitment of qualified applicants through **[the dissemination of public notices of examinations or other]** appropriate means of communication concerning the examinations. Where classes are unique to one appointing authority, the primary responsibility for recruitment may rest with that appointing authority.

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§ 95.33. **[Contents of public notices of examination.**

(a) *Formal notices.* In addition to the information required by law, the announcement of examinations shall contain the following:

(1) A statement indicating whether the examination is for employment or promotion, or both, and restrictions as to admission.

(2) A brief statement of the veterans' preference.

(3) Pertinent data listing the locations of positions in the agencies including opportunities for appointment.

(4) Prerequisites capable of self-evaluation by applicants, such as age, physical standards, residence, possession of licenses, registration, certification and qualities of character, when the limitations are imposed by law, rule, contract, classification standards or conditions of employment.

(5) Statements regarding verification of information supplied or qualifications claimed on an application or supplement thereto. The statements shall indicate that failure of the applicant to confirm the information and to substantiate the claims by acceptable proof may result in disqualification, unless statements to this effect are contained on the application form itself.

(6) A statement that specifies the effect of a newly established list on an existing list. See § 95.61(b) (relating to extension and cancellation of eligible lists).

(b) *Posting period.* Examination announcements shall be posted at locations designated by the Director for a minimum of 2 calendar weeks. Longer periods may be used when necessary to attract sufficient numbers of qualified applicants. No prospective applicant will be denied an application form. The issuance of an application form will not be construed as creating

an obligation to accept an application filed after the final acceptance date for applications.

(c) *Change in announced place of examination.* The Director may authorize postponement, cancellation and rescheduling of examination sites as necessary to achieve maximum effective use of the Commission's resources, if proper notice is provided to affected applicants.]

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Content and publication of examination announcements

(a) The Director or designee shall determine the content and method and scope of publication for each examination announcement. Such publication may be electronic. Examination announcements shall be published for a minimum of two weeks. The scope of publication shall be based on the geographic availability of positions and potentially qualified and available applicants and may be regional, statewide or include both in-state and out-of-state locations.

(b) The content of examination announcements may include:

(1) the general nature of work and pay for the class(es) for which the examination is being announced;

(2) any experience, training or other requirements for the class(es) for which the examination is being announced;

(3) information on whether the examination is being given for appointment and/or promotion;

(4) the nature of the examination; and

(5) how to apply.

RATINGS OF COMPETITORS

§ 95.41. Qualifying points on examinations.

(a) *Basis for Director's determination.* The Director, or a designee, shall set the qualifying points for part or all of an examination, as the case may be. The determination shall take into account both the number and quality of prospective eligibles needed to serve the best interests of the classified service, as well as the validity and reliability of the examination.

(b) *Notice of qualifying points.* When there is a multipart examination, the Director may require applicants to attain a qualifying score or rating on each test or part of test. **[Candidates will be informed of this fact prior to the test.]**

(c) *Effect of failure on part of examination.* An applicant who has failed to achieve a passing score on any part of the examination may be disqualified from participation in any other parts of the examination, whether or not the applicant shall have participated or have been rated therein, and if so disqualified, shall be deemed to have failed in the entire examination.

(d) *Effect of failing a higher but passing a lower level test.* Whenever an applicant is unsuccessful on a higher level examination but has obtained a qualifying score on a lower level examination for which an application had not previously been filed, the applicant may be given a reasonable opportunity to apply for eligibility in the lower level examination.

(e) *Effect of passing a higher but failing a lower level test.* Whenever an applicant is unsuccessful on a lower level test but has obtained a qualifying score on a higher level test the applicant may be given the minimum passing score on the lower level test.

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§ 95.42. Preservation of examination records.

The Director shall insure that the following documents are maintained as official Commission records:

- (1) The original or a copy of any tests used.
- (2) The description of any test used.
- (3) The public notice of the test.
- (4) The examination instructions.
- (5) The scoring keys or other scoring standards used.
- (6) The reports of the examiners.
- [(7) The resulting eligible list.]**

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§ 95.43. Inspection of examination **[papers]** records.

(a) *By the applicant.* The Director will, upon request of the applicant, authorize the inspection of the applicant's own examination **[documents] records** in the presence of an authorized employee of the Commission. The inspection will not include authorization to copy examination instructions, questions or answers and will be conducted to maintain security of the examination standards.

(b) *By law enforcement or other public officials.* The Director may authorize review of the application and examination **[papers] records** of an applicant or eligible, upon request and for legitimate official purposes, by law enforcement or other public officials where there are satisfactory reasons for the inspection. Copies of examination materials will not be provided except as provided for by other applicable statutes or regulations.

(c) *By private individuals other than the candidate.* The Director will authorize the exhibiting of applications and examination **[papers] records** to a private individual only where the individual seeking access to the **[papers] records** can demonstrate a clear necessity for the **[papers] records** in order to pursue a legal right. The Director will take necessary precautions to avoid disclosure of the identities of the persons whose applications and test **[papers] records** are being examined. Where it is evident that the release of the information would operate to prejudice or impair a person's reputation or personal security, access to the information shall be denied under section 1(2) of the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. § 66.1(2)).

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§ 95.44. Information regarding unsuccessful candidates.

Except as provided in § 95.43(b) and (c) (relating to inspection of examination **[papers] records**), the examination **[papers] records** of applicants who failed all or part of an examination, or who voluntarily withdrew from the examination, may not be exhibited; nor may information be divulged concerning their participation in the examination.

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ESTABLISHMENT OF EMPLOYMENT AND PROMOTION LISTS

§ 95.51. **[Initial] Eligible** lists.

The names of **those persons who have been found qualified for and have successfully passed the examination shall be [successful candidates,]** arranged in order of final earned ratings and including applicable veterans' credits[, when

signed by the Director or a designee shall constitute the official eligible list, effective as of the date of such signature].

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§ 95.52. [Publication of initial list.

The initial eligible list may be published with the relative standings and veterans' status of the persons named thereon; and a copy may, for information only, be supplied to appointing authorities.] Reserved.

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DURATION OF EMPLOYMENT AND PROMOTION LISTS

§ 95.61. Extension and cancellation of eligible lists.

(a) *Length of eligibility.* The duration of employment and promotion lists shall be fixed by the Director with the approval of the Commission for up to 4 years.

(b) *Replacing and integrating lists.* A newly established eligible list may replace an earlier list, appropriate for the same class or classes[, **if the announcement of the examination resulting in the later list so specified**]. The Director may integrate an eligible list with an equivalent list established later, based on final earned ratings, and veterans' preference when applicable.

(c) *Notice to eligibles.* When a list is cancelled or an examination is announced which may result in an eligible list which replaces an existing list, the persons whose names remain on the list being cancelled or replaced shall be notified of the cancellation or of their opportunity to participate in a new examination, unless the notice has been included in their original notification of eligibility.

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§ 95.63. Amendment of [initial] an eligible list.

(a) *Basis for amendment.* The Director, with the approval of the Commission, may amend an eligible list [**as initially established,**] to: correct a clerical error; indicate a change in veterans' status; add or remove a name; or suspend or alter eligibility for certification or for appointment. The reasons for the amendment shall be entered in, or be evident from records on file.

(b) *Effect of amendment.* An amendment to ~~the~~ an eligible list may not disadvantage a fully qualified eligible already appointed or notified of appointment in good faith, based on a valid certification previously issued.

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CHAPTER 97. APPOINTMENT AND PROMOTION OF EMPLOYEES IN THE CLASSIFIED SERVICE

CERTIFICATION

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§ 97.3. Certification of eligible lists.

(a) *General content of certification.* The Director will certify from the appropriate lists as many names of eligibles available, or subject to availability canvass, as shall be necessary to satisfy the employment requirements of the appropriate appointing authority. Each certification, in addition to indicating relative ranks, shall include the last known addresses and veterans' status of the eligibles. Upon request of the appointing authority, the Director will selectively certify the names of veterans eligible for preferential appointment.

(b) *Duration of certification.* A certification of names for appointment or for canvass and appointment shall be valid for a period of ~~[30]~~ 60 work days after the date of certification, unless extended by the Director, and appointive action may be initiated at any time within that period.

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§ 97.4. Effect of appointment from list.

The name of an eligible who has been appointed may not be certified from the list for a similar or lower level class, unless otherwise provided by law or this part, or by specific request of the eligible. The acceptance of **[a temporary appointment] other than permanent, full-time employment** shall not result in loss of eligibility for permanent appointment. Conversion of a temporary appointment to a permanent appointment shall require regular certification and appointment procedures.

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SELECTION AND APPOINTMENT OF ELIGIBLES

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§ 97.12. Rejection of eligibles—passovers.

(a) *General.* An eligible whose name is disregarded in the making of an appointment within the rule of three shall be considered as having been passed over. Three passovers from the same appointing authority shall result in that eligible's name being deactivated on the eligible list. Eligibles so deactivated may not be certified back to the same appointing authority unless requested by that appointing authority **or by retaking the appropriate examination.**

(b) *Exceptions.* Exceptions include the following:

(1) An eligible whose name is disregarded in the making of a preferential appointment of a veteran whose name appears on the same certification, may not be considered as having been passed over.

(2) An eligible whose name is disregarded in the making of an appointment of another eligible when there are four or more appointable eligibles on the same certification, may not be considered as having been passed over.

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§ 97.13. Removal of eligible.

An objection to the eligibility for certification or appointment of an eligible whose name appears on a certification shall be promptly raised by the appointing authority **using the process established by the Director.** If the objection is sustained by the **Director or Commission,** the appointing authority need not consider the eligible for appointment.

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PROBATIONARY PERIOD

§ 97.31. Duration and extension of probationary periods.

(a) The length of the probationary period in appointments and promotions for full-time positions, except for trainee classes, shall be 6 months (defined as 180 calendar days—6 months at 30 days per month). See § 97.37 (relating to trainee

classes). Probationary periods for part-time positions shall be prorated according to the number of hours in the work week.

(b) The probationary period, except for trainee classes, may be extended to a maximum of 18 months (defined as 545 calendar days—365 calendar days plus 6 months at 30 days per month), at the discretion of the appointing authority. If the appointing authority decides to extend an employee's probationary period, it shall notify the employee in writing at least 1 work day prior to the effective date of the extension. A copy of the notice shall be submitted **[simultaneously], upon request,** to the Director.

(c) An employee who exceeds the maximum 18-month probationary period, shall have regular status on the day after the probationary period ends.

(d) An employee who exceeds the maximum 24-month probationary period in a trainee class, shall have regular status in the approved end of training class, the day after the probationary period ends.

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§ 97.33. Service in higher level position.

A probationary employee who has served any portion of the probationary period and is given a temporary appointment to a higher level position in the same or closely related series of classes under the same appointing authority may have the period of the higher level service credited toward the lower level probationary period. Written notice to that effect shall be given **[to the Director and]**to the employee on or before the date the probationary period expires.

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§ 97.37. Trainee classes.

The Director, in cooperation with the appointing authorities and the Executive Board, may designate specific classes for training purposes. These classes shall be extensions of working level classifications. The probationary periods for the training and working levels will be combined and may be set by the Director at a minimum of **[3] 6** months (defined as **[90] 180** calendar days—**[3] 6** months at 30 days per month) and a maximum of 24 months (defined as 730 calendar days—2 years at 365 days per year), to coincide with the length of the designated training period. Employees appointed into trainee positions may not attain regular status as trainees, but shall be promoted to the working level, with regular status, if the designated training period is successfully completed. Trainees who are unsuccessful in the training shall be removed promptly. The appointing authority may extend probationary periods of trainees up to the maximum of 24 months, if written notice is provided to the employee at least 1 work day prior to the

effective date of the extension. A copy of the notice shall be submitted [simultaneously], upon request, to the Director.

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§ 97.39. Notice about performance.

The appointing authority shall notify the employee in writing whether the services of the employee have **or have not** been satisfactory **[at least 10 work days]** prior to the expiration of the employee's probationary period. **[A copy of the notice shall be provided to the Director.]** If the employee's performance has been satisfactory, the appointing authority shall confer regular status upon the employee.

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TEMPORARY AND EMERGENCY APPOINTMENTS

§ 97.51. Temporary appointment.

In connection with the request for a certification to fill a position by a temporary appointment, the certification and the appointment documents shall each show that the appointment is **[less than 12 months] for 12 months or less** (defined as 365 calendar days).

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CLASSIFICATION STANDARDS

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§ 97.63. Working out-of-class.

An appointing authority may temporarily assign an employee to perform duties and responsibilities of another class. Except in the case of emergency, which shall be limited to 30 work days, the employee so assigned shall meet all of the established requirements for the class to which assigned. **Employees assigned to work out-of-class must either have probationary or regular status in their current class.** An out-of-class assignment does not entitle the incumbent to preferences for the position on a permanent basis.

CHAPTER 99. EMPLOYEES IN THE CLASSIFIED SERVICE

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Subchapter A. TRAINING PROGRAMS

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§ 99.1. [Employees.

The Director will provide appointing authorities with training resources and other assistance required and available to aid in employee training.]

Reserved.

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Subchapter B. SERVICE STANDARDS AND RATINGS

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§ 99.11. Establishment of system.

(a) The Director, in cooperation with the appointing authorities, will establish a job-related system of performance evaluations for each class in the classified service.

(b) Performance evaluations will be based upon job-related factors appropriate for determining the manner in which the employee performs the duties and carries out the responsibilities of the position occupied. To provide a uniform and equitable basis for rating employees, the Director, in cooperation with appointing authorities, may establish work performance guides.

(c) Performance evaluation forms and procedures shall be reviewed and approved by the Director prior to utilization.

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§ 99.13. Reporting of performance evaluations.

Performance evaluations for probationary status employees shall be completed and provided to the employees prior to the scheduled expiration of the probationary period by the appointing authority[**with a copy transmitted to the Director**]. **[Reports on employees whose performance is unsatisfactory or otherwise fail to meet established standards shall be submitted to the Director promptly.]** Other performance evaluation reports shall be completed at least once each year, unless a different schedule is approved by the Director, and copies retained in the employee's official personnel file. Upon request by the Director, **[the] performance evaluation** reports shall promptly be made available for audit.

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Subchapter C. REASSIGNMENTS AND TRANSFERS

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§ 99.22. Initiation of transfer.

A transfer shall be initiated by the appointing authority having jurisdiction over the position to which the transfer is sought, and shall be made upon a form the Director authorizes[**and supplies**]. Transfer requires the written consent of the employee and the present employer.

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§ 99.26. **[Reemployment rights.**

An employee who has been transferred or reassigned to another position shall, during a period equivalent to the probationary period prescribed for the position, have the same right of return as if granted a leave of absence from the position from which transferred or reassigned.] Reserved.

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Subchapter D. REDUCTIONS IN PAY OR DEMOTIONS

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**Subchapter E. STATUS OF
INCUMBENTS OF
RECLASSIFIED POSITIONS**

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Subchapter F. COMPENSATION

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**CHAPTER 101. SEPARATION OF
EMPLOYEES FROM
CLASSIFIED SERVICE**

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SUSPENSION

§ 101.21. Generally.

(a) Good cause for suspension is one of the following:

- (1) Insubordination.
- (2) Habitual lateness in reporting for work.
- (3) Misconduct amounting to violation of law, rule or lawful and reasonable Departmental orders.
- (4) Intoxication while on duty.
- (5) Conduct either on or off duty which may bring the service of the Commonwealth into disrepute.
- (6) Similar substantial reasons.

(b) Suspension pending investigation may be instituted for the purpose of ascertaining an employee's fitness for continued employment.

(1) When the investigation has not revealed cause for disciplinary action, the suspension shall be retracted and expunged from all records, with the employee receiving back pay for the full period of suspension.

(2) When the investigation has revealed cause for disciplinary action, the suspension shall be converted, either in whole or in part, to a disciplinary action.

(c) **[An employee may not be suspended for an aggregate of more than 30 work days within 1 calendar year period, nor may a single suspension extend for more than 30 work days except that the Commission may impose a suspension of at least 30 work days but not more than 120 work days under section 905.2 of the act (71 P. S. § 741.905b).] Suspensions, to include suspensions pending internal investigation, may not exceed an aggregate of more than 60 work days in a calendar year.**

(d) An employee suspended, pending investigation by an external agency, may be suspended for the duration of the external investigation and up to 30 consecutive work days after the conclusion of the external investigation.

(e) The Commission may impose a suspension of not more than 120 work days under section 905.2 of the Act (71 P.S. § 741.905b).

* * * * *

REMOVAL DURING PROBATIONARY PERIOD

§ 101.31. Generally.

[The reasons cited by a] An appointing authority shall specify, by written notice, the reason(s) for removal of an employee before the expiration of the probationary period[shall indicate that the employee is unable or unwilling to perform the duties of the position satisfactorily, that the employee's lack of dependability does not warrant continued service, or there is other valid cause for removal].

* * * * *

§ 101.32. Rights of promoted employee during probationary period.

The position vacated by an employee serving a probationary period after promotion may not be filled during the period except on a substitute basis, subject

to the return of the employee promoted or the successful completion of the probationary term. **An employee serving a probationary period which has resulted from a promotion, may be removed from the classified service only for just cause.**

* * * * *

RETIREMENT

§ 101.41. [Initiation of retirement proceedings.

(a) **An appointing authority may initiate a proceeding for the involuntary retirement of an employee in the classified service who is eligible to receive payments from the State Employees' Retirement Fund, by making written application to the Director. The application shall be supported by evidence of the physical or mental disability of the employee indicating that the employee involved has become unfit for the efficient performance of the duties of the position and other available positions.**

(b) **An employee so retired shall have all rights of appeal as provided for employees removed.] Reserved.**

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CHAPTER 103. PROHIBITIONS, PENALTIES AND ENFORCEMENT

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CHAPTER 105. NOTICE AND HEARINGS

NOTICE

§ 105.1. Written notice required.

(a) Each appointing authority shall give employees written notice of personnel actions affecting them. **[A copy of the notice shall be submitted**

simultaneously to the Director.] At the time that the appointing authority notifies an employee of a furlough or a suspension, it shall simultaneously submit a copy of the notice to the Director.

(b) The notice requirements set forth in this subsection are mandatory. Failure to adhere to the requirements set forth in this section and § § 105.2—105.5 may nullify the personnel action.

* * * * *

§ 105.3. Statement of reasons.

Notices of removal, **[involuntary retirement,]** involuntary demotion or suspension issued to regular employees shall include a clear statement of the reasons therefore, sufficient to apprise the employee of the grounds upon which the charges are based. Notices determined to be defective may result in the reversal of the personnel action.

* * * * *

HEARINGS

§ 105.11. General.

Hearings granted to employees demoted under section 706, furloughed under section 802, **[retired under section 805,]** resigned under section 806, removed under section 807, suspended under section 803 or persons alleging discrimination under section 905.1 of the act shall be public hearings. At least 10 working days notice in advance of the date of the hearing shall be tendered in writing to the employee affected and to the appointing authority and others interested in the case, informing them of the date, time and place of hearing. Notice of the hearings shall be posted on the bulletin board located in or near the principal office of the Commission. The Civil Service Commissioners may grant requests for continuances. **The Commission, on its own motion, may grant a continuance if the scheduled hearing lasts longer than two hours.**

* * * * *

§ 105.13. Form of hearing.

(a) The hearing shall be formal, but not all of the strict rules of evidence need be enforced. Evidence offered should be the best evidence available. Documents which constitute reliable evidence or whose contents or meaning are in dispute

should be brought to hearing and entered into evidence. Whenever possible, the original document should be available to be offered into evidence.

(b) A complete stenographic, electronic or other exact record of the proceedings shall be made.

(c) A Civil Service Commissioner or a hearing officer designated by the Commission may conduct hearings.

* * * * *

§ 105.14a. Subpoenas.

(a) *Procedure for requesting subpoenas.*

(1) Subpoenas for the attendance of witnesses or for the production of documents will **be issued** only upon written application to the Chairman of the Commission or the Commissioner presiding at hearing, with a copy to the opposing party.

(2) Written application shall specify as clearly as possible the relevance of the testimony or documentary evidence sought. As to documentary evidence, the request must specify to the extent possible the documents desired and the facts to be proved thereby.

(3) Failure to adhere to the requirements of this subsection may result in the refusal by the Commission to issue the requested subpoenas.

(4) Subpoenas for new or additional witnesses will not be issued after a hearing has been commenced and continued unless orally requested on the record at the hearing and approved by the Commission, except that subpoenas issued prior to the commencement and continuance of the hearing may be reissued upon written request.

(b) *Service.*

(1) A subpoena shall be served personally upon the witness.

(2) Subpoenas for the production of documents shall be served **personally or by first-class mail** upon the individual in possession of the documents, if known, or the agency head, who may designate a knowledgeable alternate as custodian of the documents, **or the legal counsel for the appointing authority.**

(3) Service of subpoenas for the attendance of witnesses shall be made at least 48 hours prior to hearing, unless the witness agrees to waive the 48-hour

requirement. Subpoenas for the production of documents shall be served no later than 5 work days prior to hearing.

(4) Failure to adhere to the requirements of this subsection may result in a ruling by the Commission denying the enforceability of the subpoena.

(c) *Compensation of witnesses.*

(1) Witnesses subpoenaed to appear before the Commission shall be paid a witness fee at the rate specified for the Courts of Common Pleas by the party requesting the subpoena.

(2) Witnesses subpoenaed to appear before the Commission shall be paid, by the party serving the subpoena, mileage at the rate specified for the Courts of Common Pleas for each mile actually and necessarily traveled between the place named in the subpoena and either the place of residence of the witness or the work site, whichever distance is less.

(3) At the time a witness is served with a subpoena, the witness shall, upon demand, be paid the witness fee and travel expenses provided in this subsection by the party serving the subpoena. If no demand is made by the witness at the time of service, the fee shall be tendered to the witness prior to the start of the hearing.

(4) Paragraphs (1)—(3) supersede 1 Pa. Code § 35.139 (relating to fees of witnesses).

(d) *Supplementation.* Subsections (a)—(c) supplement 1 Pa. Code § 35.142 (relating to subpoenas).

* * * * *

§ 105.14d. Prehearing conferences.

(a) Prehearing conference. In order to facilitate the submission and consideration of issues and facts, the Commission may schedule a prehearing conference and request the parties to participate in the proceeding. The conference may be conducted by telephone or in person, either by a Commissioner or by an attorney employed by the Commission to consider the following:

(1) Simplification of the issues.

(2) Stipulations of fact and authenticity of documents.

(3) Admissibility and relevance of witness testimony.

(4) Admissibility and relevance of exhibits, which will be identified and exchanged at the conference.

(5) Subpoenas and all issued related to subpoenas.

(6) Offers of settlement or proposals for adjustment, if appropriate.

(7) Any other matters that would facilitate the efficiency of the proceeding.

(b) Prehearing conference memorandum. No later than three work days in advance of the prehearing conference, the parties will submit to the Commission an original memorandum, plus three copies, that contains the following:

(1) Caption identifying the parties and the appeal by its assigned appeal number.

(2) Statement of issues to be decided by the Commission. If a party intends to move the Commission to dismiss the appeal, that issue should be noted, but a Motion to Dismiss must be filed separately.

(3) Statement of stipulations, or facts not in dispute, that includes requested stipulations of fact and any agreements already reached by the parties regarding undisputed facts.

(4) Witness list with brief description of testimony of each witness listed.

(5) Exhibit list with brief description of exhibits and a brief explanation of the relevance of each exhibit listed.

(6) Estimate of time anticipated to complete presentation of evidence to the Commission.

(7) Requests for subpoenas may be included with the memorandum.

(8) At the hearing, the parties may be limited to those witnesses and exhibits set forth in the memorandum unless:

(i) A supplemental memorandum is submitted to the Commission at least one business day prior to the hearing; and

(ii) There has been proper notice to other parties and there is no showing of undue inconvenience or prejudice; or

The parties have conferred and agree to the additional witness(es) and/or exhibit(s).

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Subpart B. EXECUTIVE DIRECTOR
OF CIVIL SERVICE

CHAPTER 109. PROCEEDINGS

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CHAPTER 110. DOCUMENTARY
FILINGS AND
REPRODUCTION OF RECORDS

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Subchapter A. DOCUMENTARY
FILINGS

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Subchapter B. REPRODUCTION OF
RECORDS

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§ 110.24. Documents which may be furnished without charge.

(a) Reproductions of applications and attendant papers and records of employees or candidates, excluding test material, may be furnished to appointing

authorities to which the names of such employees or eligibles are furnished for classified service personnel actions.

(b) Reproductions of required papers and records may be furnished to court or law enforcement personnel in the conduct of official business. Test materials will be furnished only by Commission or Court order.

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§ 110.25. Documents which may not be furnished without charge.

Reproductions of **[papers and]** records not included in § 110.24 (relating to documents which may be furnished without charge) may be furnished to a requestor upon payment to the Commission of an amount equal to the prevailing cost of reproduction, as determined by the Director. Test material will not be furnished.

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§ 110.28. Records retention.

[(a) *General.*] The Director shall prepare and maintain a comprehensive records retention schedule. This schedule shall **identify those records required for retention by the act and** satisfy the act regarding open access under reasonable conditions.

[(b) *Retention schedule.*] The retention schedule shall meet the following principles:

(1)] Minutes of Commission meetings shall be permanent.

(2) Correspondence, eligible lists and other papers and records relating to a decision or determination of the Commission setting the rights, privileges, immunities, duties or other obligations of a person shall be maintained for 4 years.

(3) Applications and examination records of candidates who voluntarily withdraw from the examination process shall be retained for a period of 1 year beyond their withdrawal. Retention of these records beyond 1 year need only be in computer format.

(4)] Records may be kept **[in original or facsimile] either electronically or mechanically.**

* * * * *

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

2003 DEC 22 PM 12: 05

REGULATORY REVIEW COMMISSION

I.D. NUMBER: 61-05

SUBJECT: Act 140 of 2002 Implementation

AGENCY: Pennsylvania State Civil Service Commission

TYPE OF REGULATION

Proposed Regulation

Final Regulation

X 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

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

12/22/03

B. Ryland

HOUSE COMMITTEE ON Labor Relations

12/22

Me

SENATE COMMITTEE ON State Government

12/22

St. Belmont

INDEPENDENT REGULATORY REVIEW COMMISSION

12/22/03

Joseph Now

ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU

April 20, 2001