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COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ADMINISTRATION

May 15, 2017

Pennsylvania Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17101

RE: Proposed Rulemaking IRRC #3167  
State Civil Service Commission Proposed Regulation 61-6

To the Commission:

The State Civil Service Commission (hereinafter, Commission) Proposed Regulation Number 61-6, IRRC Number 3167, was published in the Pennsylvania Bulletin on April 22, 2017. Upon review of the proposed regulation, the Office of Administration has concerns that several of the amendments to the Commission's regulations contained in the proposed regulation are not in conformity with the letter or the spirit of the State Civil Service Act, 71 P.S. §§ 741.1-741.1005, as amended. Accordingly, the Office of Administration hereby submits the following comments and suggested changes to the Commission's proposed regulation.

The State Civil Service Act (hereinafter, Civil Service Act or Act) was amended twice in 2016 by the General Assembly to modernize and improve hiring processes for Commonwealth agencies and citizens who wish to work for the Commonwealth<sup>1</sup>. These statutory amendments will improve and standardize hiring of employees across the Commonwealth enterprise. To date, the Civil Service Commission has not implemented the statutory reforms of Acts 69 and 167. It appears that several of the amendments in the proposed regulation do not comport with the 2016 statutory amendments.

Section 2 of the Act states: "Greater efficiency and economy in the administration of the government of this Commonwealth is the primary purpose of this act. The establishment of conditions of service which will attract to the service of the Commonwealth qualified persons of character and ability and their appointment and promotion on the basis of merit and fitness are means to this end." 71 P.S. § 741.2. The amendments in the proposed regulation do not provide greater efficiency in the administration of government, nor do they establish conditions which will attract qualified persons to the service of the Commonwealth. Rather, the proposed amendments, if promulgated, defeat the 2016 changes to the Act. They impose improper restrictions on the application of the new vacancy-based hiring process, which significantly impede appointing

<sup>1</sup> Act 69 of 2016 and Act 167 of 2016. Copies of each act are enclosed herewith for reference as Exhibits 1 and 2, respectively.

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authorities' ability to fill jobs. The net effect of the proposed amendments is to reject the statutory changes of 2016 that will lead to improved application processes and vacancy-based hiring. The Commission's proffered implementation of the 2016 changes to the Act, contained in its proposed rulemaking, is onerous, inflexible and reflects poor customer service to appointing authorities and to persons who may seek civil service-covered employment with the Commonwealth.

Commonwealth agencies were not solicited for input regarding the amendments in the Commission's proposed regulation. The Commission provided the Office of Administration with the final version of the proposed regulation; however, the comments and suggested revisions of the Office of Administration, along with representatives of the Departments of Labor and Industry, Banking and Securities, and Human Services, were not considered by the Commission. Accordingly, the Office of Administration is providing its comments and suggested revisions to the Independent Regulatory Review Commission for review and consideration, along with providing the Commission with a copy of these comments and suggested revisions for reconsideration.

The Preamble and Regulatory Analysis Form for the proposed regulatory package indicate that the proposed rulemaking will have no adverse fiscal impact. The Office of the Budget provided a fiscal note for the regulation indicating that as proposed it has “[n]o fiscal impact.” The fiscal note, however, further provides that because the proposed regulation fails to actually implement two of the amendments to the Civil Service Act contained in Act 167 of 2016, such failure will result in significant costs to the Commonwealth as well as the inability to achieve cost savings.

Specifically, regarding the amendments to Section 212(d) of the Act, which provides: “The [C]ommission shall enter into an agreement to utilize the form and method of an employment application that is standard across departments and agencies that are under the Governor’s jurisdiction for the purpose of entrance to, or promotion in, the classified service”, the Commission’s failure to implement the provisions of Act 167 will result in an additional cost of \$2 million to \$3 million to the Commonwealth to modernize the Commission’s current information technology system. In addition, the proposed regulation does not implement the amendment to Section 502 of the Civil Service Act, contained in Section 4 of the Act 167 of 2016, which states: “The appointing authority shall select the method of examination that shall be used for the individual position or the class of positions for which the employment or promotion list is being established”. Actual implementation of this statutory amendment would result in an estimated cost savings to the Commonwealth of \$55,800 to \$105,000 through the elimination or reduction of items associated with written examinations.

The Office of Administration submits the following comments and suggestions to the amendments in the Commission's proposed regulation to ensure that the rulemaking, if promulgated, complies with both the letter and the legislative intent of the 2016 statutory amendments to the Civil Service Act.

### **Administrative Recommendations**

Throughout the proposed regulation, where the term “Director” appears, insert the phrase “or designee”. The addition of this phrase will allow the Director to delegate certain duties in order to ensure that the absence or unavailability of the Director will not adversely affect hiring or promotions in the Civil Service.

The Act does not contain a definition of “classification series,” nor does the Act use this term; rather, the Act uses the terms “class” and “position,” which are both defined under the Act, *see* 71 P.S. § 741.3. Therefore, it is recommended that the term “classification series” be deleted throughout the proposed regulation.

Insert “position or” in Sections 95.20 after “the duties of the” and before “class of positions”; and in Section 97.11, before “classification” throughout these sections of the proposed regulation, to conform to the language of Section 601 of the Act, which provides, in pertinent part:

601. Certification.—Whenever a vacancy is likely to occur or is to be filled in the classified service, the appointing authority shall submit to the director a statement indicating the position to be filled... 71 P.S. § 741.601.

### **Regulatory Amendments Fail to Conform to the Act**

#### **Application requirements – Section 95.1**

Act 167 of 2016 amended Section 212(d) of the Act, providing: “The [C]ommission shall enter into an agreement to utilize the form and method of an employment application that is standard across departments and agencies that are under the Governor’s jurisdiction for the purpose of entrance to, or promotion in, the classified service.” 71 P.S. § 741.212(d).

The proposed amendments to Section 95.1 of the Commission’s regulation, as drafted, do not conform to the Civil Service Act, as amended. The proposed regulation states that the Director determines the format of any application; however, Section 212(d) of the Act requires the Commission to use the “form and method of an employment application that is standard across departments and agencies that are under the Governor’s jurisdiction...” 71 P.S. § 741.212(d). The Office of Administration, Office for Information Technology, the entity responsible for the Commonwealth’s information technology, has established ITP-BUS008, *Enterprise Employment Application Platform Policy*, as the form and method of employment application standard across the departments and agencies under the Governor’s jurisdiction. Pursuant to the Act, the Commission is to use that application platform to comply with the requisites of Section 212(d).

It is recommended that the words, “shall be made in a format prescribed by the Director” be deleted from Section 95.1, and the word “a” between “utilize” and “form” be changed to “the” to be consistent with the language in Section 212(d) of the Act, which provides, “The [C]ommission shall enter into an agreement to utilize the form and method of an employment application that is standard across departments and agencies that are under the Governor’s jurisdiction for the purpose of entrance to, or promotion in, the classified service.” 71 P.S. § 741.212(d). The revised section should read:

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*§ 95.1. Submission of applications. Applications required of a candidate for entrance to, or promotion in, the classified service, shall utilize the form and method of application that is standard across departments and agencies that are under the Governor's jurisdiction 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.*

#### Authority to Select Method of Examination – Section 95.20

Section 502 of the Act, as amended by Act 167 of 2016, states, in relevant part:

502. Nature of Examinations. -- Examinations shall be conducted to establish employment and promotion lists. Such examinations may be written or oral, or a demonstration of skill, or an evaluation of experience and education, or a combination of these, which shall fairly appraise the fitness and ability of competitors. The appointing authority shall select the method of examination that shall be used for the individual position or the class of positions for which the employment or promotion list is being established...

The Commission's proposed amendment to implement this section, § 95.20. *Authority*, does not comport with the plain language of Section 502 of the Act. The text of the proposed regulation provides:

#### § 95.20 Authority.

Examinations for all classified service positions will be prepared and approved by the Director. If the Director determines that more than one method of examination will fairly test the relative capacity and fitness of persons examined to perform the duties of the class of positions to which they seek to be appointed or promoted, the appointing authority shall select the method of examination that will be used for the individual position or the class of positions for which the employment or promotion list is being established. When the same classification is used by more than one appointing authority, the affected appointing authorities must reach a consensus on the method of examination that will be used for that classification as only one examination method will be used by the Commission to examine all candidates for positions in the same classification. Except as otherwise authorized in this part, or as authorized in writing by the Director, appointing authorities shall not develop and administer their own examinations for employment or promotion in the classified service. [SCSC amendatory language underlined in boldface in original.]

The Commission's proposed amendments to Section 95.20 conflict with Section 502 of the Act in two significant ways. First, Section 502 of the Act vests the appointing authority with the ability to select the method of examination (written or oral, or a demonstration of skill, or an evaluation of experience and education, or a combination of these) to be used when seeking to hire. Pursuant to Section 502, the Commission is not involved in the selection of the method of examination. Rather, Section 502 obligates the Commission to adopt the method of examination selected by the appointing authority for civil service-covered positions. The proposed regulatory amendments to

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Section 95.20 contravene the dictates of Section 502 by inserting the Director into the selection of examination method process. The proposed amendments attempt to limit the appointing authority's ability to select the method of examination by stating, “[i]f the Director [of the Commission] determines that more than one method of examination will fairly test the relative capacity and fitness of persons examined to perform the duties of the class of positions to which they seek to be appointed or promoted.”

The attempt to give the Director such authority is also troublesome from a practical standpoint, as the appointing authority – the agency with the position to be filled – is better suited to know the needs associated with its open position in order to select the method of examination that will fairly test the relative capacity and fitness of the persons examined to perform the duties associated with the position.

Presently, the Commission utilizes written examinations for the preponderance of positions. As a result, an appointing authority has no ability to “select the method of examination”. The proposed amendments to Section 95.20 render the appointing authority’s options moot. Clearly, this is not what the legislature intended. The proposed amendments will still leave the decision as to the method of exam in the hands of the Commission, contrary to the Act. Only in those cases where the Commission determines that more than one type of exam can be used will an agency be given the choice of which to use. When contacted by Office of Administration, the Departments of Human Services, Labor and Industry, Liquor Control Board, Environmental Protection and Conservation and Natural Resources indicated that no multiple examination types were made available to them by the Commission. Further, there is no ability for an agency to challenge the Commission’s finding that there is only one appropriate method of testing.

Second, the amendments to Section 95.20 conflict with Section 502 of the Act by requiring that, “[w]hen the same classification is used by more than one appointing authority, the affected appointing authorities must reach a consensus on the method of examination that will be used for that classification as only one examination method will be used by the Commission to examine all candidates for positions in the same classification.” This amendment to Section 95.20 ignores the plain language of Section 502 of the Act, which gives “the appointing authority” – not a consensus among multiple appointing authorities – the ability to select the examination method for a position or class of positions. Instead, the proposed amendments seek to require that whenever the same classification is used by more than one appointing authority, the affected agencies must reach a consensus on the method of examination that will be used for that classification as only one examination method will be used by the Commission to examine all candidates for positions in the same classification. Such restrictions are not within scope of the Act, and, therefore, should be removed.

The proposed regulation ignores the Commission’s admission in this regulation that there can be more than one valid type of exam for the job title, and ignores the unique needs of agencies (e.g., a primarily Harrisburg based agency may find that requiring a written exam does not have a significant impact on recruitment, while an agency with many field locations may find the opposite). It is reasonable to expect that one agency may prefer a written exam for a job title, while another agency may prefer an examination based upon experience-and-training. For

example, exams for information technology positions are currently written, but have been experience-and-training examinations in the past. One agency, such as the Department of Human Services, may want to use written exams for IT jobs, while the Department of Transportation determines that experience-and-training exams are preferred for positions in that agency.

Moreover, given that job classifications in the civil service can cover a multitude of actual positions across multiple agencies, it is not reasonable to require all of the agencies to agree on a common method of “examination” for differing positions. It undermines the ability of agencies to use vacancy-based hiring. The determination of an appropriate examination should be based upon an agency’s position, not a job title, and the Commission’s proposed regulatory language does not advance that goal or the statutory requirements.

To be consistent with Section 502 of the Act, it is recommended that the proposed regulation be revised to read as follows:

**§95.20 Authority.**

*The appointing authority shall select the method of examination that shall be used for the individual position or the class of positions for which the employment or promotion list is being established.*

**Appointment process – Use of Alternative to Rule of Three – Section 97.11**

Act 69 of 2016 amended Section 601 of the Civil Service Act to allow eligibles lists other than the standard “Rule of Three.” The purpose of this statutory amendment, which was sought by the Commission, is to allow appointing authorities to adapt the size of the eligibles list to the particular position it seeks to fill. Section 601 of the Act permits appointing authorities to elect to use alternate procedures other than the “Rule of Three”. Specifically, Section 601 of the Act provides:

Section 601. Certification. -- Whenever a vacancy is likely to occur or is to be filled in the classified service, the appointing authority shall submit to the director a statement indicating the position to be filled. Unless the appointing authority elects to follow one of the alternative procedures provided for in this act, or unless there is in existence a labor agreement covering promotions in the classified service, in which case the terms and procedures of such labor agreement relative to the procedures for promotions shall be controlling, the director shall certify to the appointing authority the names of the three highest ranking available persons on the certification of eligibles unless the director has specified, prior to testing the eligibles on the list, that either all available persons regardless of ranking or a specified alternative number, other than three, of the highest ranking available persons will be used in making selections for this classification. If the appropriate employment or promotion certification of eligibles contains fewer than three eligibles who are willing to accept appointment or if there is no appropriate eligible list, the appointing authority may appoint an available eligible from the approved list or request the director to certify from such other list or lists as the director deems the next most nearly appropriate. If operational conditions of the appointing authority so dictate and it is found to be in the interest of the service to the Commonwealth, the director may authorize selective

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certifications based on merit-related criteria. Any person on any promotion or employment list who waives consideration for promotion or appointment need not be considered among the names from which a promotion or appointment is to be made.

The Commission's regulation imposes restrictions on the application of this new process, which significantly impede appointing authorities' ability to use this expanded list process to fill jobs. The Commission's proposed regulation provides:

§ 97.11. Appointment process.

(a) Right of choice in making appointments and promotions when using the rule of three. Unless permission has been obtained from the Director to use an alternative rule. [The] the rule-of-three applies when making selections from employment and promotion lists. If the appropriate list contains fewer than three eligibles, the Director may, upon request of the appointing authority, certify candidates from other appropriate lists to ensure the appointing authority has at least three available eligibles from which to choose.

(b) Right of choice to make appointments and promotions using an alternative rule. If an appointing authority wants to use an alternative rule to the rule of three for its appointments to a specific classification or classification series, it must obtain permission from the Director by submitting a request in writing to the Director which satisfies all of the following conditions.

(1) The request must specify the classification or classification series to which the alternative rule will apply.

(2) The request must be submitted to the Director in writing prior to the date on which the Commission begins testing after announcing that a new examination will be offered for the classification or classification series which is subject to the request. If no request is made for an alternative rule, the rule of three shall apply and must be used for at least twelve months before a request for an alternative rule can be initiated.

(3) Once approved by the Director, the alternative rule must be used by the appointing authority for all selections it makes in the specified classification or classification series for at least twelve months before a new alternative rule request for the same classification can be initiated.

(4) The appointing authority must have received written permission from the Director to use the alternative rule prior to making any selections using the alternative rule.

(5) In cases in which an examination program is open on a continuous

basis, the request for a change to an alternative rule can be initiated at any time, however no appointments using the new rule can be made before written permission is obtained from the Director. An appointing authority must continue to use the same alternative rule to make all appointments and promotions in the specified classification or classification series for at least twelve months before a new alternative rule request for the same classification can be initiated.

The Commission's proposed implementation of this legislative change is inflexible and reflects poor customer service to appointing authorities and to persons who may seek civil service-covered employment with the Commonwealth. This regulation incorrectly provides that appointing authorities must secure permission from the Director to use an alternative rule; however, Section 601 gives the right of election to the appointing authority by stating: "Unless the appointing authority elects to follow one of the alternative procedures provided for in this act..."

Additionally, appointing authorities that use an alternative rule are required to use that alternative rule (or the Rule of Three, if no alternative rule is requested) for a full year on a statewide basis under Sections 97.11(b)(2), (3), and (5) of the proposed regulation. Such a restriction does not allow appointing authorities to adapt to changing circumstances or adjust the alternative rule in a timely fashion. These proposed requirements impinge upon and conflict with the unfettered authority granted to appointing authorities pursuant to Section 601 of the Act to "elect to follow one of the alternative procedures" to fill a vacancy in the classified service. 71 P.S. §741.601. By limiting the use of the alternative rule to an entire classification rather than a single vacant position, requiring that the alternative rule be used for an entire year regardless of the positions sought to be filled, and obligating all agencies that employ individuals within a classification to use that alternative rule, this proposed regulation will require an appointing authority to use the exact same rule throughout the Commonwealth, without regard to differing labor market circumstances in different parts of the state. For instance, if DEP requests a Rule of Ten for Environmental Engineers in its Southeastern Regional Office (Philadelphia), the same rule must apply to its Northcentral Regional Office (Williamsport), even though those offices may have very different recruitment issues.

In addition, the term "classification series" is not defined or used in the Act, nor is it defined in the Commission's regulation; therefore, it is suggested that the term be deleted. Section 601 references the filling of a "position"; therefore, the term is inserted, below, to conform to the statute and to allow for flexibility with vacancy-based job posting.

To comply with Section 601 of the Civil Service Act, subsections (a) and (b) of proposed Section 97.11 should be amended to read as follows:

*§ 97.11. Appointment process.*

*(a) Right of choice in making appointments and promotions when using the rule of*

*three. Unless the appointing authority has elected to use an alternative rule, the rule-of-three applies when making selections from employment and promotion lists. If the appropriate list contains fewer than three eligibles, the Director or designee may, upon request of the appointing authority, certify candidates from other appropriate lists to ensure the appointing authority has at least three available eligibles from which to choose.*

*(b) Right of choice to make appointments and promotions using an alternative rule. If an appointing authority elects to use an alternative rule to the rule of three for its appointments to a specific position or classification, it must submit the election in writing to the Director or designee which satisfies all of the following conditions.*

- (1) The request must specify the position or classification to which the alternative rule will apply.*
- (2) The request must be submitted to the Director or designee in writing prior to the date on which the Commission begins testing after announcing that a new examination will be offered for the position or classification which is subject to the request.*
- (3) The appointing authority must have received written acknowledgement from the Director or designee prior to making any selections using the alternative rule.*
- (4) In cases in which an examination program is open on a continuous basis, the election of a change to an alternative rule can be initiated at any time, however no appointments using the new rule can be made before written acknowledgement is obtained from the Director or designee.*

### Vacancy-Based Hiring – Sections 98.1 and 98.2

The main purpose of the statutory changes of Acts 69 and 167 of 2016 is to allow agencies to fill vacant positions as they occur. This is the practice employed by private-sector employers and, increasingly, public-sector employers. Vacancy-based hiring is essential to the ability of the Commonwealth to maintain its complement. It allows interested individuals to apply for a job for which they qualify and are interested. It also dramatically shortens the time to hire qualified individuals for the Commonwealth.

The 2016 amendments to Section 602 of the Civil Service Act are the platform for vacancy-based hiring. Under Section 602, the Director, upon request, certifies eligibles to the appointing authority. There is no statutory authority for the Director to give permission to an appointing authority to fill a position, as set forth in the proposed regulation.

Section 602 of the Act, as amended by Act 69 of 2016, reads as follows:

Section 602. Selection and Appointment of Eligibles.— (a) Unless a labor agreement contains promotion procedures which are inconsistent with this act, in which case the terms

of the labor agreement shall be controlling, if a vacant position is to be filled, an appointing authority may:

- (1) request the director to issue an appropriate certification of previously tested and active eligibles; or
  - (2) request the director to create and issue a certification of eligibles consisting only of the names of those candidates who responded by applying for the vacancy after receipt of notice of the vacancy from the commission, provided the director approves the use of this alternative selection procedure to fill the vacancy. The failure of a candidate to apply for the vacancy shall be considered a waiver under section 601.
- (b) The certification of eligibles created and issued under this section shall be valid for ninety work days. If the vacant position is to be filled from an employment or promotion list, the appointing authority shall select a person who is among the three highest ranking available persons on the certification of eligibles, unless the director has specified, prior to testing the eligibles on the list, that either all available persons regardless of ranking or a specified alternative number other than three of the highest ranking available persons will be used in making selections for the classification. In making the second, third or any additional selection from the eligibles on an employment or promotional certification, each selection shall be from among the similarly ranked available persons remaining on such certification of eligibles. After a person has been rejected three times by an appointing authority in favor of others on the same eligible list, such person shall not again be certified to that appointing authority, except upon written request from the appointing authority. Appointing authorities shall promptly report to the director the appointment of eligibles who have been certified. If a certified eligible refuses to accept an offer of employment, such refusal shall be promptly investigated by the director and, if it be found that the refusal has been made for improper or insufficient reasons, the director shall after giving ten days' notice to such person remove the eligible from the list.

Accordingly, it is recommended that Sections 98.1 and 98.2 of the proposed regulation be amended as follows to comport with Section 602 of the Act.:

*§ 98.1 Vacancy based eligible lists*

*If an appointing authority requests a certification of eligibles from the Director or designee to fill a vacant position pursuant to Section 602(a)(2) of the Act, the eligible list for that vacancy shall be created using only the names of those qualified candidates who applied for the vacant position after notice of the vacancy is announced by the Commission.*

*§ 98.2 Requesting a vacancy-based examination announcement*

*(a) Action of the Director. An appointing authority electing to fill a vacant position pursuant to Section 602(a)(2) of the Act must prepare a request for the creation and certification of eligibles and submit it to the Commission's Director or designee. The Director will provide notice of the vacancy to prospective applicants.*

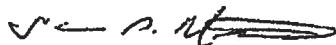
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(b) *Creation of an Eligible List*

- (1) *After the expiration of the time period when qualified applicants must have completed the applicable civil service examination to be eligible for selection, the Director shall certify the names of those eligibles who responded by applying for the vacancy. Each certification so created will indicate the relative ranks of the applicants as well as the last known contact information for each eligible on the list, and, if applicable, veteran's preference status, age preference status, or similar status with regard to any other preference provided by law.*
- (2) *The process for selecting a candidate to fill the vacancy will then follow the Selection and Appointment of Eligibles procedures as set forth in Commission Rules beginning at §97.11, et seq.*

The Office of Administration respectfully requests that the Independent Regulatory Review Commission accept these comments. By copy of this letter, the Office of Administration again recommends to the State Civil Service Commission that it review and accept the above-referenced changes to its proposed regulation in order to conform to the provisions of the State Civil Service Act as amended by Acts 69 and 167 of 2016.

Sincerely,



Sharon P. Minnich

Enclosures

cc: State Civil Service Commission

**EXHIBIT A**  
**Act 69 of 2016**

**CIVIL SERVICE ACT - RATINGS OF COMPETITORS, APPOINTMENT AND  
PROMOTION OF EMPLOYEES IN THE CLASSIFIED SERVICE, CERTIFICATION,  
SELECTION AND APPOINTMENT OF ELIGIBLES**

**Act of Jul. 7, 2016, P.L. 465, No. 69**

**Cl. 71**

Session of 2016

No. 2016-69

SB 1154

**AN ACT**

Amending the act of August 5, 1941 (P.L.752, No.286), entitled "An act regulating and improving the civil service of certain departments and agencies of the Commonwealth; vesting in the State Civil Service Commission and a Personnel Director certain powers and duties; providing for classification of positions, adoption of compensation schedules and certification of payrolls; imposing duties upon certain officers and employes of the Commonwealth; authorizing service to other State departments or agencies and political subdivisions of the Commonwealth in matters relating to civil service; defining certain crimes and misdemeanors; imposing penalties; making certain appropriations, and repealing certain acts and parts thereof," in selection of employees for entrance to or promotion in the classified service, further providing for ratings of competitors; and, in appointment and promotion of employees in the classified service, further providing for certification and for selection and appointment of eligibles.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 505 of the act of August 5, 1941 (P.L.752, No.286), known as the Civil Service Act, amended August 27, 1963 (P.L.1257, No.520), is amended to read:

Section 505. Ratings of Competitors.--The final earned rating of a person competing in any examination shall be attained by computing the ratings for each part or parts of the examination, the qualifying point for which is set by the director under the direction of the commission according to weights for each test established by the director. The director shall [send] provide notice by [mail] electronic mail or other communication or method if available or, alternatively, by United States mail to all competitors informing them whether they have attained a place upon the list and informing those who have attained a place upon the list of the number who took the examination, the number on the list, and of their relative standing upon the list.

Section 2. Sections 601 and 602 of the act, amended November 27, 2002 (P.L.1129, No.140), are amended to read:

Section 601. Certification.--Whenever a vacancy is likely to occur or is to be filled in the classified service, the appointing authority shall submit to the director a statement indicating the position to be filled. Unless the appointing authority elects to follow one of the alternative procedures provided for in this act, or unless there is in existence a labor agreement covering promotions in the classified service, in which case the terms and

procedures of such labor agreement relative to the procedures for promotions shall be controlling, the director shall certify to the appointing authority the names of the three [eligibles who are highest on the appropriate promotion list or employment list, whichever is in existence, or from the one, which under the rules of the commission, has priority.] highest ranking available persons on the certification of eligibles unless the director has specified, prior to testing the eligibles on the list, that either all available persons regardless of ranking or a specified alternative number, other than three, of the highest ranking available persons will be used in making selections for this classification. If the appropriate employment or promotion certification of eligibles contains fewer than three eligibles who are willing to accept appointment or if there is no appropriate eligible list, the appointing authority may appoint an available eligible from the approved list or request the director to certify from such other list or lists as the director deems the next most nearly appropriate. If operational conditions of the appointing authority so dictate and it is found to be in the interest of the service to the Commonwealth, the [commission] director may authorize selective certifications based on [standards to be prescribed by the commission] merit-related criteria. Any person on any promotion or employment list who waives consideration for promotion or appointment need not be considered among the names from which a promotion or appointment is to be made.

Section 602. Selection and Appointment of Eligibles.--[If] (a) Unless a labor agreement contains promotion procedures which are inconsistent with this act, in which case the terms of the labor agreement shall be controlling, if a vacant position is to be filled, an appointing authority may:

(1) request the director to issue an appropriate certification of previously tested and active eligibles [unless a labor agreement contains promotion procedures which are inconsistent with this act, in which case the terms of such labor agreement shall be controlling.]; or

(2) request the director to create and issue a certification of eligibles consisting only of the names of those candidates who responded by applying for the vacancy after receipt of notice of the vacancy from the commission, provided the director approves the use of this alternative selection procedure to fill the vacancy. The failure of a candidate to apply for the vacancy shall be considered a waiver under section 601.

(b) The certification of eligibles created and issued under this section shall be valid for [sixty] ninety work days. If the vacant position is to be filled from an employment or promotion list, the appointing authority shall select a person who is among the three highest ranking available persons on the certification of eligibles[.], unless the director has specified, prior to testing the eligibles on the list, that either all available persons regardless of ranking or a specified alternative number, other than three, of the highest ranking available persons will be used in making selections for the classification. In making the second, third or any additional selection from the eligibles on an employment or promotional certification, each selection shall be from among the [three highest scoring] similarly ranked available persons remaining on such certification of eligibles. After a person has been rejected three times by an appointing authority in favor of others on the same eligible list, such person shall not again be certified to that appointing authority, except upon

written request from the appointing authority. Appointing authorities shall promptly report to the director the appointment of eligibles who have been certified. If a certified eligible refuses to accept an offer of employment, such refusal shall be promptly investigated by the director and, if it be found that the refusal has been made for improper or insufficient reasons, the director shall after giving ten days' notice to such person remove the eligible from the list.

Section 3. This act shall take effect immediately.

. APPROVED--The 7th day of July, A.D. 2016.

TOM WOLF

**EXHIBIT B**

**Act 167 of 2016**

**CIVIL SERVICE ACT - STATE CIVIL SERVICE COMMISSION, POWERS AND DUTIES OF DIRECTOR, SERVICE TO STATE DEPARTMENTS, BOARDS AND COMMISSIONS OR AGENCIES AND POLITICAL SUBDIVISIONS; COOPERATION COMMISSIONS OR AGENCIES AND POLITICAL SUBDIVISIONS; COOPERATION**

**Act of Nov. 21, 2016, P.L. 1314, No. 167**

**Cl. 71**

Session of 2016  
No. 2016-167

HB 192

**AN ACT**

Amending the act of August 5, 1941 (P.L.752, No.286), entitled "An act regulating and improving the civil service of certain departments and agencies of the Commonwealth; vesting in the State Civil Service Commission and a Personnel Director certain powers and duties; providing for classification of positions, adoption of compensation schedules and certification of payrolls; imposing duties upon certain officers and employes of the Commonwealth; authorizing service to other State departments or agencies and political subdivisions of the Commonwealth in matters relating to civil service; defining certain crimes and misdemeanors; imposing penalties; making certain appropriations, and repealing certain acts and parts thereof," in Civil Service Commission and executive director and their powers, further providing for State Civil Service Commission, for powers and duties of director and for service to State departments, boards and commissions or agencies and political subdivisions; cooperation with other civil service agencies; and, in selection of employes for entrance to or promotion in the classified service, further providing for nature of examinations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 201 of the act of August 5, 1941 (P.L.752, No.286), known as the Civil Service Act, amended October 5, 2011 (P.L.310, No.76), is amended to read:

Section 201. State Civil Service Commission.--(a) The State Civil Service Commission shall consist of three full-time members, not more than two of whom shall be of the same political affiliation, appointed by the Governor, with the advice and consent of a majority of the members elected to the Senate. Each appointment shall be for a term of six years or until a successor is appointed and qualified. The members of the commission shall hold no other public position to which a salary is attached. The Governor shall designate one of the members as chairman. No commission member shall hold any office or position, the duties of which are incompatible with his official duties. At least one member of the commission must be a veteran.

(b) The chairman of the commission shall receive a salary of sixty-five thousand dollars (\$65,000.00) per annum. Each other member of the commission shall receive a salary of sixty-two thousand five hundred dollars (\$62,500.00) per annum.

(b.1) The commissioners shall receive annual cost-of-living increases under section 3(e) of the act of September 30, 1983 (P.L.160, No.39), known as the "Public Official Compensation Law." Each commissioner shall be entitled to receive actual traveling expenses.

(c) Any person appointed as a member of the commission shall be a citizen and legal resident of the Commonwealth for a period of not less than one year who is in sympathy with modern personnel methods and the application of merit principles to public employment. No person who[, within one year preceding his appointment, has been an officer of a political party] holds or campaigns for any other public office, holds office in a political party or political committee, actively participates in or contributes to a political campaign, directly or indirectly attempts to influence a decision by a governmental body other than a court of law or as a representative of the commission on a matter within the jurisdiction of the commission or is employed by the Commonwealth or a political subdivision in any other capacity, whether or not for compensation, shall be eligible to serve as a commissioner. The Governor may remove any member of the commission, but only for incompetence, inefficiency, neglect of duty, malfeasance or misfeasance in office by giving such member a statement in writing of the charges against him and affording him, after notice of not less than ten days, an opportunity of making written answer and, upon request, being publicly heard in person and by counsel. A copy of the charges and answer of the Governor's findings and a transcript of the record shall be filed with the secretary of the commission.

Section 2. Section 206 of the act is amended by adding a paragraph to read:

Section 206. Powers and Duties of Director.--Under the direction and supervision of the commission, the director, except as otherwise provided in this act, shall direct and supervise the administrative work of the commission. The director shall have power and the duty--

\* \* \*

(11) To advertise, on the commission's publicly accessible Internet website and in all commission announcements, advertisements and examination materials, that veterans' preference is the law of this Commonwealth and that, to determine standing on all certified eligibility lists, an additional ten points will be applied to the final examination score obtained by a veteran, in accordance with 51 Pa.C.S. § 7103 (relating to additional points in grading civil service examinations), and the same preferential rating given to veterans under this chapter shall be extended to include spouses, in accordance with 51 Pa.C.S. § 7108 (relating to preference of spouses).

Section 3. Section 212(d) of the act, amended May 21, 1943 (P.L.516, No.231), is amended to read:

Section 212. Service to State Departments, Boards and Commissions or Agencies and Political Subdivisions; Cooperation with Other Civil Service Agencies.--\* \* \*

(d) The commission shall have power from time to time to enter into agreements with other public personnel agencies in this or any other State and with agencies of the federal government for the purpose of using and exchanging information and services. The commission shall enter into an agreement to utilize the form and method of an employment application that is standard across departments and agencies that are under the Governor's

**jurisdiction for the purpose of entrance to, or promotion in, the classified service.** The commission shall have power to become a member of or subscribe to any association or service having as its purpose the interchange of information relating to the technique of personnel administration.

Section 4. Section 502 of the act, amended November 27, 2002 (P.L.1129, No.140), is amended to read:

Section 502. Nature of Examinations.--[The director shall give examinations] **Examinations shall be conducted to establish employment and promotion lists.** Such examinations may be written or oral, or a demonstration of skill, or an evaluation of experience and education, or a combination of these, which shall fairly appraise the fitness and ability of competitors. **The appointing authority shall select the method of examination that shall be used for the individual position or the class of positions for which the employment or promotion list is being established.** Such examinations shall be practical in character and shall relate to the duties and responsibilities of the position for which the applicant is being examined and shall fairly test the relative capacity and fitness of persons examined to perform the duties of the class of positions to which they seek to be appointed or promoted. An applicant may be required to possess scholastic education qualifications only if the position for which the applicant is being examined requires professional or technical knowledges, skills and abilities or if such scholastic qualifications are required to assure the continued eligibility of the Commonwealth for Federal grants-in-aid. No greater credit for experience gained during a provisional, emergency or temporary appointment under this act or acts repealed hereby shall be given to any person in any examination than is given in such examination for experience in the same type of work performed in a similar position not under the provisions of this act or acts repealed hereby. In evaluating experience in order to compute the final rating in any examination to establish employment and promotion lists, persons discharged other than dishonorably, after active service during any war or armed conflict in which the United States engaged, from any branch of the armed service of the United States, or from any women's uniformed service directly connected therewith, shall not be given less credit for experience than would be given for continued experience in the position held at the time of induction in the service. No question in any examination shall relate to the race, gender, religion or political or labor union affiliation of the candidate.

Section 5. This act shall take effect immediately.

APPROVED--The 21st day of November, A.D. 2016.

TOM WOLF

<h1 style="text-align: center;">Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p><b>(All Comments submitted on this regulation will appear on IRRC's website)</b></p>		<b>INDEPENDENT REGULATORY REVIEW COMMISSION</b> <div style="display: flex; align-items: center; justify-content: space-between;"> <span>2017 Reg 21</span> <span>IRRC</span> </div>
<p><b>(1) Agency</b> <b>State Civil Service Commission</b></p> <p><b>(2) Agency Number:</b> 61 Identification Number: <b>Fiscal Note #61-06</b></p>		<b>IRRC Number:</b> <i>3167</i>
<p><b>(3) PA Code Cite:</b> Amendments to 4 Pa. Code §§ 91.3; 95.1; 95.20; 95.43; 95.47; 95.71; 97.3; 97.11; 97.12; 97.31; 97.38; 97.63; 99.24; 103.11; 103.23; 105.11; and 110.2. Also proposed is the creation of a new Chapter in 4 Pa. Code, Chapter 98, "Appointment and Promotion of Employees in the Classified Service by Recruiting Applicants to Apply for a Specific Vacancy-Based Examination Announcement" §§ 98.1 and 98.2.</p>		
<p><b>(4) Short Title:</b> Implementation of Acts 69 and 167 of 2016.</p>		
<p><b>(5) Agency Contacts (List Telephone Number and Email Address):</b> Primary Contact: Karen Denise Wood, Esq. (717) 783 1444, <a href="mailto:kawood@pa.gov">kawood@pa.gov</a> Secondary Contact: Frederick C. Smith, Jr., Esq. (717) 783-1444, <a href="mailto:fsmith@pa.gov">fsmith@pa.gov</a></p>		
<p><b>(6) Type of Rulemaking (check applicable box):</b></p> <p><input checked="" type="checkbox"/> Proposed Regulation  <input type="checkbox"/> Final Regulation  <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;  <input type="checkbox"/> Certification by the Governor  <input type="checkbox"/> Certification by the Attorney General</p>
<p><b>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</b></p> <p>Amends current rules of the State Civil Service Commission at 4 Pa. Code §§ 91.3, 95.47, 97.3, 97.11, and 97.12, and adds a new Chapter 98 to the current rules to comply with changes made to the Civil Service Act by Act 69 of 2016 (SB 1154); further amends current rules of the State Civil Service Commission at 4 Pa. Code §§ 95.1 and 95.20 to comply with changes made to the Civil Service Act by Act 167 of 2016, (HB 192); and further also amends other current rules of the State Civil Service Commission at 4 Pa. Code §§ 95.43, 95.71, 97.31, 97.38, 97.63, 99.24, 103.11, 103.23, 105.11 and 110.2 to clarify and or bring them into conformity with Commonwealth Court decisions and current Civil Service Commission practices.</p>		
<p><b>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</b></p> <p>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).</p>		

 RECEIVED  
IRRC

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The proposed regulations would amend and also supplement the Rules of the Civil Service Commission to comply with changes to the Civil Service Act as a result of Acts 69 and 167 of 2016. Other Rule amendments would incorporate changes that would conform to current Commission procedures and practices.

The change to rule 95.43 conforms to the revised definition for the "personal security exemption" in the Right to Know Law, 65 P.S. § 67.708(b)(1)(ii).

Rule 97.31 clarifies that regular status can never be obtained merely by the passage of time without an affirmative act by an appointing authority as held by the Commonwealth Court in Wernersville State Hospital v. Peters, 659 A.2d 67 (Pa. Commw. 1995).

Rule 103.11 is changed to incorporate the holding of the Pennsylvania Supreme Court in Pinto v. State Civil Service Commission, 912 A.2d 787 (Pa 2006).

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The primary reason for these regulations is to implement the legislative changes to the Civil Service Act made by Acts 69 and 167 of 2016. The amendments permit the Commission to offer an alternative method of selecting candidates for civil service positions through a process known as "vacancy based hiring." Instead of filling jobs using standard certification lists, appointing authorities will be able to request permission to post vacancies and fill positions using a certification list created by the Commission from among only those applicants who applied for the specific vacancy. Potential beneficiaries include the appointing authority seeking candidates for the vacancy as well as job-seekers, which could include every adult person in Pennsylvania's labor force who is interested in civil service employment. Other changes are intended to conform the Commission's existing personnel regulations to current Commission policies and practices, or to clarify the meaning of existing rules without making a substantive change to the operation of the rules. These latter changes will primarily benefit those who are already employed in civil service positions (approximately 56,000 members).

(11) 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 regulations.

N/A. There are no federal regulations that govern the same subject matter as these Commonwealth personnel regulations. There are no federal regulations that conflict with these Commonwealth personnel regulations.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Although most states regulate their civil service employees, Pennsylvania's personnel practices and procedures are uniquely governed by Pennsylvania law. Nothing in these proposed regulatory changes will either advantage or disadvantage Pennsylvania as compared to other states in its ability to regulate its own civil service system.

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

No. These regulations will not affect any other regulations of the Commission or of other Commonwealth agencies. The new hiring procedure will be an alternative method only. Other existing hiring methods have not been changed and will still be available to use.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

These regulations were developed using a committee comprised entirely of employees of the State Civil Service Commission.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

These are Commonwealth personnel rules. No private sector business entities will be affected by these regulations. The only persons affected will be Commonwealth agencies who employ civil service employees, the persons who are already civil service employees, and persons who are seeking to become civil service employees.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

See response to number 15 above. Virtually every Commonwealth agency employs some civil service covered employees. There are approximately 56,000 current civil service employees. At any given time, the Commission has the names of approximately 100,000 active job seekers on its civil service employment lists.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

No financial, economic or social impact is anticipated from enacting these regulations.

The fiscal note from Act 69 of 2016 states, "Senate Bill 1154 will have no adverse impact on Commonwealth funds. The Office of Administration anticipates that the bill will result in cost savings by using electronic methods to notify applicants and through the implementation of an integrated vacancy based hiring system."

The fiscal note from Act 167 of 2016 states, "The enactment of House Bill 192 will have no adverse impact on Commonwealth funds. The Civil Service Commission already advertises veterans' preference in a prominent manner on its internet website and other materials and can make any minor changes required by the Act within its current operating budget."

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

As stated elsewhere in this RAF, these regulations will neither produce adverse economic effects nor increase costs, and may even generate cost savings for the Commonwealth.

(19) 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. Explain how the dollar estimates were derived.

**N/A**

(20) Provide a specific estimate of the costs and/or savings to the local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

**N/A**

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

**N/A**

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No new forms other than those already in current use by the Commission have been created or will be used as a result of these regulatory changes. No new recordkeeping or other paperwork requirements will be imposed beyond those already required to document the filling of civil service job vacancies when the Commonwealth hires a new employee.

(22a) Are forms required for implementation of the regulation?

No.

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

**N/A**

(23) 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. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$ 0	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	\$ 0					
<b>COSTS:</b>	\$ 0					
Regulated Community						
Local Government						
State Government						
Total Costs	\$ 0					
<b>REVENUE LOSSES:</b>	\$ 0					
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	\$ 0					

(23a) Provide the past three year expenditure history for programs affected by the regulation. N/A

Program	FY -3	FY -2	FY -1	Current FY
N/A				

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:			
<ul style="list-style-type: none"> <li>(a) An identification and estimate of the number of small businesses subject to the regulation.</li> <li>(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.</li> <li>(c) A statement of probable effect on impacted small businesses.</li> <li>(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.</li> </ul>			
<b>N/A</b>			
(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.			
<b>N/A.</b> No such special provisions are needed to implement the changes required by Acts 69 and 167 of 2016.			
(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.			
These regulatory changes closely adhere to other existing Pennsylvania law or to the recent changes to Pennsylvania law made by Acts 69 and 167 of 2016. Alternative regulations were not considered as the Pennsylvania State Civil Service Commission has determined that these regulations represent the least burdensome and acceptable way to comply with Pennsylvania law.			

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

**N/A.** There will be no impact, adverse or otherwise, on small business.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

**N/A.** No data was used as a basis for these regulatory changes. Changes are based on law, not data.

(29) Include a schedule for review of the regulation including:

- A. The length of the public comment period: 30 days
- B. The date or dates on which any public meetings or hearings will be held:  
April 19, 2017 Harrisburg  
April 25, 2017 Pittsburgh  
May 12, 2017 Philadelphia
- C. The expected date of delivery of the final-form regulation: May 17, 2017
- D. The expected effective date of the final-form regulation: May 27, 2017
- E. The expected date by which compliance with the final-form regulation will be required: May 27, 2017
- F. The expected date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Commission will work closely with the Governor's Office of Administration and the Human Resources personnel of all agencies who employ civil service personnel to evaluate the continuing effectiveness of these regulations.

REGULATORY ACTION/ADMINISTRATIVE PROCEDURE  
SECTION 612 ACT 149 OF 1978  
FISCAL NOTE

DATE	AGENCY IDENT NO
January 6, 2017	61 - 06

**INSTRUCTIONS:** When sending proposed regulatory actions or administrative procedures to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin, or if required, to the Department of Justice for review as to legality, complete this form and forward original with a copy of the proposed regulatory actions or administrative procedures to Office of Budget, Bureau of Legislative and Regulatory Analysis, 7th Floor, Verizon Tower. Use the work sheet and retain extra copies for agency use. For further information regarding completion of form, call Office of the Budget, Bureau of Legislative and Regulatory Analysis, 717-787-2033.

**SECTION A**

AGENCY <b>State Civil Service Commission</b>	CHECK APPLICABLE BOX: <input checked="" type="checkbox"/> ADMINISTRATIVE DEPARTMENT <input type="checkbox"/> BOARD <input checked="" type="checkbox"/> COMMISSION <input type="checkbox"/> AUTHORITY	COMMONWEALTH OF PENNSYLVANIA		POLITICAL SUBDIVISION	
SUBJECT OF REGULATION (ON FINAL REGULATIONS OR REGULATIONS BEING REPROPOSED, INCLUDE A COPY OF THE INITIALLY PROPOSED REGULATIONS)		YES	NO	YES	NO
<b>Implement Acts 69 &amp; 167 of 2016</b>			X		X
WILL THIS PROPOSAL RESULT IN A LOSS OF REVENUE?*			X		X
WILL THIS PROPOSAL CAUSE AN INCREASE IN PROGRAM COSTS?*			X		X
FUND(S) - IDENTIFY (GENERAL FUND, MOTOR LICENSE FUND, ETC.) <b>N/A N/A</b>					
APPROPRIATION(S) - CITE APPROPRIATION ACT OR OTHER LEGISLATION WHICH APPROPRIATED THE FUNDS INVOLVED, IDENTIFY ACT NUMBER, YEAR OF ENACTMENT AND INCLUDE SPECIFIC LINE ITEM WORDING FROM APPROPRIATION.					

**N/A**

\*IF THERE IS NO INCREASE IN PROGRAM COSTS OR LOSS OF REVENUE TO THE COMMONWEALTH OR POLITICAL SUBDIVISIONS, COMPLETE ONLY SECTION A.

**SECTION B**

FUND(S) LIST SEPARATELY	IMPLEMENTING YEAR FY -	ESTIMATED INCREASE IN PROGRAM COST					ESTIMATED REVENUE LOSS				
		1ST SUCCEEDING YEAR FY 08 - 09	2ND SUCCEEDING YEAR FY -	3RD SUCCEEDING YEAR FY -	4TH SUCCEEDING YEAR FY -	5TH SUCCEEDING YEAR FY -	1ST SUCCEEDING YEAR FY 08 - 09	2ND SUCCEEDING YEAR FY -	3RD SUCCEEDING YEAR FY -	4TH SUCCEEDING YEAR FY -	5TH SUCCEEDING YEAR FY -
GENERAL											
OTHER											
OTHER											
FISCAL THREE YEAR HISTORY OF PROGRAM COST											
20_____	FY 20_____	\$ _____					\$ _____				
20_____	FY 20_____	\$ _____					\$ _____				
20_____	FY 20_____	\$ _____					\$ _____				

EXPLAIN METHOD OF COMPUTING COST OR REVENUE LOSS INCLUDING ASSUMPTIONS, IF ANY.

HAS THE INCREASED COST BEEN PROVIDED FOR IN CURRENT BUDGET?  YES  NO  
IF "NO," HOW WILL FUNDS BE OBTAINED TO MEET INCREASED COST? LIST OTHER PROGRAMS TO BE REDUCED AND AMOUNT. IDENTIFY SPECIFIC OBJECTS FOR REDUCTION OR ELIMINATION SUCH AS SALARIES, SUPPLIES, EQUIPMENT, ETC. IF ADDITIONAL SPACE IS NEEDED CONTINUE ON REVERSE OF THIS SHEET.

*(Signature)*

SIGNATURE

PREPARED BY <b>Frederick C. Smith, Jr.</b>	TITLE <b>Chief Counsel</b>	TELEPHONE NO <b>(717) 783-1444</b>
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OFFICE OF THE BUDGET

CDL-1

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

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2017 MAR 21 AM 10:34

<p>DO NOT WRITE IN THIS SPACE</p>		
<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: <u>Karen D. Wren</u> (DEPUTY ATTORNEY GENERAL)</p> <p><u>2/28/17</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>Pennsylvania State Civil Service Commission (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u># 61-06</u> DATE OF ADOPTION: <u>1-9-2017</u></p> <p>BY: <u>Jeffrey T. Wallace</u> TITLE: <u>EXECUTIVE DIRECTOR</u></p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>Frederick C. Smith, Jr.</u> Chief Counsel, Independent Agency</p> <p><u>1-9-2017</u> DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>

## STATE CIVIL SERVICE COMMISSION

### 4 PA. CODE

The State Civil Service Commission proposes to amend its Regulations and add new regulations. The Commission is publishing these amendments and new rules as a notice of proposed rulemaking under the authority of section 208 of the Civil Service Act (act) (71 P.S. § 741.208).

#### *A. Effective Date*

These proposed amendments, if approved on final-form rulemaking, will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

#### *B. Contact Person*

For further information on the proposed amendments, contact Karen Denise Wood, Esq., whose contact information appears below in the "Public Comments" section of this Preamble.

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

#### *C. Statutory Authority*

The statutory authority for the proposal is section 203(1) of the act (71 P.S. § 741.203(1)).

#### *D. Purpose and Background*

The Civil Service Act was amended by the Act 69 of 2016 (SB 1154) and Act 167 of 2016 (HB 192). These proposed new Regulations and amendments to the existing Regulations will bring them into conformity with these amendments to the act. Other amendments are proposed to update older hearing regulations to reflect current practices and procedures.

### *E. Summary of Proposal*

The proposed amendments are designed to bring the Commission's Regulations into conformity with the recent amendments to the Act. Specifically, current rules of the State Civil Service Commission at 4 Pa. Code §§ 91.3, 95.47, 97.3, 97.11, and 97.12, are amended and a new Chapter 98 (§§ 98.1 and 98.2) to the current rules is being added to comply with changes made to the Civil Service Act by Act 69 of 2016 (SB 1154). In addition, current rules of the State Civil Service Commission at 4 Pa. Code §§ 95.1 and 95.20 are being amended to comply with changes made to the Civil Service Act by Act 167 of 2016, (HB 192). Other current rules of the State Civil Service Commission at 4 Pa. Code §§ 95.71, 97.31, 97.38, 97.63, 99.24, 103.11, 103.23, 105.11 and 110.2 are being amended to clarify and or bring them into conformity with intervening Commonwealth Court decisions and current Civil Service Commission practices. These latter amendments are intended to bring Commission regulations governing civil service hearing procedures into conformity with current hearing practices. Some changes are further intended simply to clarify existing regulations without changing the regulation itself in any substantive way.

### *F. Paperwork Requirements*

The proposed rulemaking will not add to existing paperwork requirements. Many of the proposed changes could actually reduce current paperwork requirements.

### *G. Fiscal Impact*

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

### *H. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on or after March 21, 2017, the Commission will submit a copy of this proposed rulemaking and a copy of a Regulatory Analysis Review Form to the Independent Regulatory Review Commission (IRRC), the Chairpersons of the House Labor and Industry Committee and the Senate State

Government Committee. A copy of this material will be available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review by the Commission, the General Assembly and the Governor of objections raised prior to final publication of the rulemaking.

#### *I. Public Comments*

The Commission invites written comments, suggestions or objections to this proposed rulemaking from interested persons, agencies and organizations or in person comments or questions at its public hearings on the proposed amendments to be held as follows:

Public Hearing Room in the Commission's Main Office  
Strawberry Square Complex, 4<sup>th</sup> Floor, Bowman Worth Building,  
320 Market Street, Harrisburg, PA 17108-0569

April 19, 2017 at 1:00 p.m.

Western Regional Office, 1503 State Office Building,  
300 Liberty Avenue, Pittsburgh, PA 15222-1210

April 25, 2017 at 1:00 p.m.

Eastern Regional Office, 10 South 11<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Philadelphia, PA 19107-3618

May 12, 2017 at 10:00 a.m.

Those desiring to present their views on the proposed amendments or receive a copy shall notify Karen Denise Wood, Esq., Assistant Counsel of the State Civil Service Commission, 4<sup>th</sup> Floor, Bowman Worth Building, P.O. Box 569, Harrisburg, PA 17108-0569, by telephone

(717) 783-1444, by fax (717) 772-5120, or via email at ra-cs-legalsvcsQandA@pa.gov. Notification of intent to speak at a public hearing shall be made not later than 4:30 p.m. at least two working days prior to the scheduled hearing date. Speakers will be required to identify themselves and the organization they represent, if any. Persons with a disability who wish to attend this public hearing and who may require an auxiliary aid or other service to participate should also contact Karen Denise Wood, Esq., to discuss possible accommodation of needs.

Jeffrey T. Wallace,  
*Executive Director*

### **§ 91.3. Definitions.**

Words, terms and phrases, when used in this part, have the meaning 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:

**Act**—The Civil Service Act (71 P.S. §§ 41.1—741.1005).

**Alternative Rule**—**A selection rule designated by the Director for the classification which allows the appointing authority to select from among either all eligibles on a certification list or a specific alternative number of eligibles, other than three, but not less than three.**

.....

**Resignation**—The voluntary termination of employment by an employee,[ usually ] evidenced by the employee's written notice.

.....

**Unskilled labor**—A person occupying or assigned to a position for which the principal job requirement is good physical condition as related to the duties of the particular position.

**Vacancy Based Eligible List**—**A certification of eligibles consisting only of the names of those candidates who applied for a specific vacancy after notice of the vacancy is announced by the Commission.**

#### **Source**

The provisions of this § 91.3 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (275934), (299499) to (299500) and (275937).

### **§ 95.1. Application requirements.**

(a) Submission of applications. Applications required of a candidate for entrance to, or promotion in, the classified service, shall be made in a format prescribed by the Director, shall utilize a form and method of application that is standard across departments and agencies that are under the Governor's jurisdiction, 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 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, 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 to perform the essential functions of the position's duties and responsibilities 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.

**Source**

The provisions of this § 95.1 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (229020) to (229022).

**§ 95.20. Authority.**

Examinations for all classified service positions will be prepared and approved by the Director. If the Director determines that more than one method of examination will fairly test the relative capacity and fitness of persons examined to perform the duties of the class of positions to which they seek to be appointed or promoted, the appointing authority shall select the method of examination that will be used for the individual position or the class of positions for which the employment or promotion list is being established. When the same classification is used by more than one appointing authority, the affected appointing authorities must reach a consensus on the method of examination that will be used for that classification as only one examination method will be used by the Commission to examine all candidates for positions in the same classification. Except as otherwise authorized in this part, or as authorized in writing by the Director, appointing authorities shall not develop and administer their own examinations for employment or promotion in the classified service.

**Source**

The provisions of this § 95.20 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

**§ 95.43. Inspection of examination records.**

- (a) By the applicant. The Director will, upon request of the applicant, authorize the inspection of the applicant's own examination 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 records of an applicant or eligible, upon request and for legitimate official purposes, by law enforcement or other public officials when 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 records to a private individual only when the individual seeking access to the records can demonstrate a clear necessity for the 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 records are being examined. When it is evident that the release of the information would [ operate to prejudice or impair a person's reputation or personal security ] be reasonably likely to result in a substantial and demonstrable risk of physical harm to or personal security of an individual, 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))].

**Source**

The provisions of this § 95.43 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (229035) to (229036)..

**§ 95.47. Determination of rank in event of tie.**

Final earned ratings shall be calculated to whole numbers or categories represented by whole numbers. Ties in final earned ratings shall not be broken. All available eligibles with the same

final earned rating shall be certified in accordance with the rule of three or any alternative rule properly designated by the Director. This section provides for issuance of a complete certification of eligibles, as determined by the number of vacancies, which includes all eligibles with the same final earned rating, as well as to group for consideration those eligibles determined by the examination process to be approximately equally qualified.

**Source**

The provisions of this § 95.47 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (0616).

**§ 95.71. Review of eligibility or examination results.**

An applicant who wishes to challenge a finding of ineligibility or an examination score shall contact the Director, in writing, within [ 30 ] 20 calendar days of [ receipt ] the date of notice of the examination result being challenged. The Director will review the applicant's qualifications or examination results and provide the applicant with an explanation or revised result. An applicant still dissatisfied may appeal this decision under section 905.1 of the act (71 P.S. § 741.905a). An appeal shall be filed within 20 calendar days as provided for in § 105.12 (relating to requests).

**Source**

The provisions of this § 95.71 adopted November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334.

**§ 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 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 [ 60 ] 90 work days after the date of certification, unless extended by the Director, and appointive action may be initiated at any time within that period.

**Source**

The provisions of this § 97.3 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (204945).

**§ 97.11. Appointment process.**

- (a) Right of choice in making appointments and promotions when using the rule of three. Unless permission has been obtained from the Director to use an alternative rule, [ The ] the rule-of-three applies when making selections from employment and promotion lists. If the appropriate list contains fewer than three eligibles, the Director may, upon request of the appointing authority, certify candidates from other appropriate lists to ensure the appointing authority has at least three available eligibles from which to choose.
- (b) Right of choice to make appointments and promotions using an alternative rule. If an appointing authority wants to use an alternative rule to the rule of three for its appointments to a specific classification or classification series, it must obtain permission from the Director by submitting a request in writing to the Director which satisfies all of the following conditions.
  - (1) The request must specify the classification or classification series to which the alternative rule will apply.
  - (2) The request must be submitted to the Director in writing prior to the date on which the Commission begins testing after announcing that a new examination will be offered for the classification or classification series which is subject to the request. If no request is made for an alternative rule, the rule of three shall apply and must be used for at least twelve months before a request for an alternative rule can be initiated.
  - (3) Once approved by the Director, the alternative rule must be used by the appointing authority for all selections it makes in the specified classification or classification series for at least twelve months before a new alternative rule request for the same classification can be initiated.
  - (4) The appointing authority must have received written permission from the Director to use the alternative rule prior to making any selections using the alternative rule.

(5) In cases in which an examination program is open on a continuous basis, the request for a change to an alternative rule can be initiated at any time, however no appointments using the new rule can be made before written permission is obtained from the Director. An appointing authority must continue to use the same alternative rule to make all appointments and promotions in the specified classification or classification series for at least twelve months before a new alternative rule request for the same classification can be initiated.

[(b)] [(c)] Right of choice in making multiple appointments. In making multiple appointments from a certification, the appointing authority shall follow the same procedure, and shall make only appointments, as is permissible when a series of certifications is used in making single appointments. The appointing authority may, however, in its discretion, appoint a certified eligible whose name was rejected three times previously during the process of making the multiple appointments.

Source

The provisions of this § 97.11 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (96765) to (96766).

§ 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 eligibles 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.

...**(3) An eligible whose name is disregarded in the making of an appointment of another eligible when an alternative rule is being used to make the appointment on the same certification may not be considered as having been passed over.**

**§ 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, 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] for a position, or the maximum 24 month probationary period if in a trainee class position, without being awarded regular status can request a hearing by filing an appeal with the Commission pursuant to the requirements of Section 951(b) of the Civil Service Act.
- [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.]

**Source**

The provisions of this § 97.31 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended May 5, 1972, effective May 6, 1972, 2 Pa. B. 813; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended September 2, 1994, effective September 3, 1994, 24 Pa. B. 4460; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (204950) and (227453).

**§ 97.38. Probation following promotion.**

A [promoted] regular status employee who is promoted shall serve the probationary period of the duration specified for the class to which promoted, subject to the following conditions:

- (1) During the probationary period, the position vacated by the employee will not be filled except on a substitute basis.
  - (2) During the first 3 months of the probationary period, the employee has the option to return to the regular status position previously held.
  - (3) At any time after the first 3 months of the probationary period, the employee may return to the previous regular status position or classification with written consent of the appointing authorities.
  - (4) If the services of the employee are found unsatisfactory by the appointing authority, the employee shall be restored to the previous regular status position or classification.
- (5) A promoted employee who has never held regular status in the classified service has no right to return to a probationary status position previously held.**

**Source**

The provisions of this § 97.38 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended September 2, 1994, effective September 3, 1994, 24 Pa. B. 4460. Immediately preceding text appears at serial pages (164737) to (164738).

**§ 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 ] no more than 60 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 shall 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.

**Source**

The provisions of this § 97.63 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (204956).

A new Chapter will be added to the Commission's current Rules as follows:

**CHAPTER 98. APPOINTMENT AND PROMOTION OF EMPLOYEES IN THE  
CLASSIFIED SERVICE BY RECRUITING APPLICANTS TO APPLY FOR A  
SPECIFIC VACANCY-BASED EXAMINATION ANNOUNCEMENT.**

**§ 98.1 Vacancy based eligible lists**

When an appointing authority receives permission from the Director to fill a vacant position pursuant to Section 602(a)(2) of the Civil Service Act, the eligible list for that vacancy shall be created using only the names of those qualified candidates who applied for the vacant position after notice of the vacancy is announced by the Commission.

**§ 98.2 Requesting a vacancy-based examination announcement**

(a) Permission of the Director. An appointing authority electing to fill a vacant position pursuant to Section 602(a)(2) of the Civil Service Act must prepare a request for the vacant position and submit it to the Commission's Executive Director for approval. If the Director approves the request, the Director will provide notice of the vacancy to prospective applicants by using technology approved by the Commission.

**(b) Creation of an Eligible List**

(1) After the expiration of the time period when qualified applicants must have completed the applicable civil service examination to be eligible for selection, the Director shall certify the names of as many eligibles as necessary to satisfy the employment requirements of the appointing authority. Each certification so created will indicate the relative ranks of the applicants as well as the last known contact information for each eligible on the list, and, if

applicable, veteran's preference status, age preference status, or similar status with regard to any other preference provided by law.

**(2) The process for selecting a candidate to fill the vacancy will then follow the Selection and Appointment of Eligibles procedures as set forth in Commission Rules beginning at §97.11, et seq.**

Source

§ 99.24. Effect of transfer on probationary period.

The unexpired portion of the probationary period of a transferee shall continue to be served in the position to which transferred, unless the prospective transferee accepted the position after being notified in writing that the appointing authority having jurisdiction over the position [ , with the consent of the prospective transferee, requires ] would require service of a full probationary period in the position as a condition of the transfer.

Source

The provisions of this § 99.24 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (82311).

§ 103.11. Exception to prohibited political activities.

(a) Notwithstanding the political activities expressly prohibited by the act, classified service employees are permitted to seek and accept appointment, nomination and election to the office of school board director. This exception applies only to the employee who is the candidate. For other civil service employees, the restrictions on political activity remain in effect for school director elections.

(b) The provisions of the act which expressly prohibit certain political activities do not apply to the classified service employee who has been furloughed or who is on a regular unpaid leave of absence, [ or] a leave of absence to take a non-civil service position, or a leave of absence subject to the requirements of 71 Pa.C.S.A. § 5302(b) to serve as an elected full time officer for a statewide employee collective bargaining organization. An employee on another type of paid leave of absence shall continue to comply with the political activity restrictions while on

leave. Upon return to the classified service the employee shall immediately cease the political activities prohibited by the act. An employee elected to public office while on leave, who returns to the classified service, may serve out the remaining portion of the present term of office if the duties of the office are not among those prohibited by the act. The employee may not run for or be nominated for a new term of office.

**Source**

The provisions of this § 103.11 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (96794).

**§ 103.23. Penalty for violation.**

If after due inquiry, an employee has been found to have violated the act or this subsection and has been penalized by removal [ for 1 year] from the classified service for a period of time determined by the Commission as set forth in section 906 of the act (71 P.S. § 741.906), the employee may not reenter the classified service except through appointment from an employment list.

**Source**

The provisions of this § 103.23 adopted November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334.

**§ 105.11. General.**

[ Hearings granted to employees demoted under section 706 of the act (71 P.S. § 741.706), furloughed under section 802 of the act (71 P.S. § 741.802), resigned under section 806 of the act (71 P.S. § 741.806), removed under section 807 of the act (71 P.S. § 741.807), suspended under section 803 or persons alleging discrimination under section 905.1 of the act (71 P.S. § 741.905a) ] All hearings scheduled by the Commission pursuant to its authority to conduct hearings as provided in Section 951 of the act, 71 P.S. § 741.951, 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 2 hours.

**Source**

The provisions of this § 105.11 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (292975).

**§ 110.2. Exhibits.**

- (a) Parties presenting exhibits shall bring [ six ] two copies to the hearing.
- (b) Subsection (a) supersedes 1 Pa. Code § 33.15 (relating to number of copies).

**Source**

The provisions of this § 110.2 adopted December 19, 1980, effective December 20, 1980, 10 Pa. B. 4721; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (96811).

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

**I.D. NUMBER:** 61-06  
**SUBJECT:** Implementation of Acts 69 and 167 of 2016  
**AGENCY:** Pennsylvania 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  
(  ) With Revisions    (  ) Without Revisions

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**FILING OF REGULATION**

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
3/21/17	<u>Eleanor Maynard</u>	<u>HOUSE COMMITTEE - Labor and Industry</u>
3/21/17	<u>Vander</u>	<u>MAJORITY CHAIR</u> Rob W. Kauffman
		<u>MINORITY CHAIR</u> John T. Galloway
3/21/17	<u>Lokohs</u>	<u>SENATE COMMITTEE - State Government</u>
3/21/17	<u>John Battaglia</u>	<u>MAJORITY CHAIR</u> Mike Folmer
3/21/17	<u>K Cooper</u>	<u>MINORITY CHAIR</u> Anthony H. Williams
		<u>INDEPENDENT REGULATORY REVIEW COMISSION</u>
		<u>ATTORNEY GENERAL</u> (for Final Omitted only)
3/21/17	<u>Courin Incent</u>	<u>LEGISLATIVE REFERENCE BUREAU</u> (for Proposed only)