

May 22, 2017

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

Re: Pennsylvania State Civil Service Commission  
Proposed Regulation #61-6  
Implementation of Act 69 of 2016 and Act 167 of 2016  
IRRC Identification Number 3167

2017 MAY 22 PM 3:58

RECEIVED  
IRRC

Dear Commissioners:

On April 22, the Pennsylvania State Civil Service Commission (SCSC) published, in the *Pennsylvania Bulletin*, proposed regulations to implement Act 69 of 2016 (Act 69) and Act 167 of 2016 (Act 167). The Department of Environmental Protection (DEP) has serious concerns regarding the impact of these proposed regulations. In response, DEP is providing the following comments. SCSC did not contact or solicit input from DEP on its proposed regulations.

Last year, Governor Wolf signed both Act 69 and Act 167 into law. These laws made significant changes to Pennsylvania's Civil Service Act (Act). These statutory amendments were enacted to modernize hiring practices through SCSC and improve service delivery. The changes should make it easier for candidates to apply for positions, create a larger candidate pool from which agencies could choose, and give agencies the ability to decide the method of examinations to be used in evaluating candidates for positions. Instead of implementing the laws as written, SCSC issued proposed regulations that undermine the intended purposes of these laws and hinder their implementation.

Approximately 94% percent of DEP's positions are covered by the SCSC. Therefore, DEP has a significant interest in having the laws implemented as written and intended. We are providing the following specific examples of how these legislative changes will allow DEP to improve services and how the proposed regulations will negatively impact service delivery. Also, attached to this comment letter are suggested changes to the regulatory language included in the Annex A.

#### **Section 95.1. Application requirements.**

Act 167 amended Section 212 (d) to provide that "[t]he 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 entrance to, or promotion in, the classified service." 71 P.S. §741.212(d).

This change to the law was made to make it easier for people to apply for state jobs by having a single site for both non-Civil Service and Civil Service positions. For Civil Service positions at DEP, this would be an important change because it is increasingly difficult to compete with private sector employers as well as federal employers due to our antiquated application system. The current application and job referral process is very difficult to explain. The current application and referral process involves up to, and potentially more than, ten steps:

1. Create a user profile
2. Find open exams to apply to
3. Find a test center
4. Schedule a time to take test
5. Travel to center and take test
6. Wait for score
7. Possibly be contacted via availability survey
8. Return availability survey
9. Might not get interview due to Rule of 3
10. Retake test when current eligibility period retires
11. Constantly check website for new exams; start process over

Conversely, private sector employers can direct candidates to a single online application. A candidate can apply in one step and be contacted for an interview. Some employers can offer on the spot interviews. Federal employers can direct candidates to an online job posting and application system that utilizes the same software as the Commonwealth's new enterprise system. When given the choice between a one-step or two-step process compared to a ten-plus step process, the Commonwealth is clearly at a disadvantage in appealing to potential employees.

Additionally, having to explain that there are two application methods: Civil Service and non-Civil Service, usually confuses candidates. Having a single application system will encourage candidates to apply for Commonwealth positions. The establishment of a viable candidate pool for vacancies is extremely important to DEP because, as of May 2017, 12% of our current highly specialized workforce is retirement eligible. Within four years, that number will increase to approximately 28%. Our ability to successfully implement a workforce planning and succession program is directly linked to the successful utilization of the provisions in Act 69 and Act 167.

#### **Section 95.20. Authority to Select Method of Examination.**

Act 167 amended Section 502 of the Act to allow the appointing authority (i.e. the agency) to determine the "method of examinations." 71 P.S. §741.502. SCSC currently uses written tests or experience and training ("E&T") to evaluate candidates for positions. Based on our scientific and technical workforce needs, DEP is in a better position to know how candidates should be

evaluated for our specific positions. For example, DEP is the primary user of the environmental engineering and geologist job series. By conducting countless classification reviews of filled and vacant positions, and working closely with supervisors and managers of these job titles, our Human Resources (HR) staff is well-versed in the work performed by incumbents in these job titles. HR's familiarity with DEP's technical programs and the spirit and intent of Act 167 demonstrate that it would be more efficient for candidates to be evaluated on an E&T basis as opposed to a written exam.

Implementing the use of E&T to evaluate candidates would eliminate the need for agencies to request localized testing and accelerated exam programs from SCSC. These two actions are time consuming and costly undertakings. Both actions require an agency to pay significant advertising costs. Additionally, SCSC dictates when and how long the testing period will be open. This inhibits DEP from promoting effective advertising, which can result in an inefficient use of agency funds.

Allowing agencies to evaluate candidate information from E&T will provide greater consistency in eligibility determinations. At the present time, agencies evaluate candidates that bid on internal postings while SCSC evaluates candidates who apply for exams. There have been times where DEP staff and SCSC staff have reached different conclusions for the same candidate. This undermines the authority of both parties. DEP's HR staff better understands the work based on daily interactions with its technical program employees. Additionally, if agencies are the primary reviewers of candidate eligibility, it stands that they should be the owners of the evaluation guide that is used to determine eligible education and work experience. Currently, SCSC is owner of this process. Whenever a change to an evaluation guide is needed, there is a chance that the SCSC will require a full job analysis. This closes the exam for application and requires participation from agency subject matter experts, which takes them away from their DEP duties. Depending on the job title, this can delay hiring for positions by months.

In addition, with written tests, candidates must take time off from work and drive to one of the six SCSC test sites for written exams. Due to the remote geographic locations of many DEP field offices, candidates must often travel significant distances to reach a test center. The reduced number of testing centers means that there is greater competition for the available test time slots.

#### **Section 97.11. Appointment Process – Use of Alternative to Rule-of-Three.**

Act 69 amended Section 601 of the Act to allow expansion of hiring eligible lists other than the standard "Rule-of-Three." With the standard Rule-of-Three, DEP often has difficulty filling certain positions. The Rule-of-Three poses a significant impairment to DEP's ability to hire clerk typists in Dauphin County. Because of the high concentration of clerk typist 2 positions within agency headquarters located in Dauphin County, the competition for candidates is intense. It is quite common for supervisors to conduct interviews and submit their selected candidates, only to find that all of their top candidates have already accepted other clerk typist positions. This requires continuation of the interview process. Often, supplemental lists are required to ensure

that there are enough candidates to establish a Rule-of-Three, which adds up to another three weeks to the process due to the mailing and receipt of availability surveys. Then interviews are conducted again and the cycle repeats itself. If an alternative option could be used, such as a Rule-of-Five or Rule-of-Seven, supervisors could interview a larger pool of candidates at the onset and eliminate multiple rounds of interviewing. This would increase the odds of being able to make a successful job offer more quickly.

An alternative to the Rule-of-Three would also increase the diversity of the candidate pool. Some candidates do not take tests well and receive lower scores than their education, experience or training indicate. Due to the low score, it is rare that they will make it into a Rule-of-Three and be contacted for interview. This discourages candidates from reapplying in the future. A poor test taker does not mean that the candidate would not be an asset for the Commonwealth.

In addition, the proposed regulations have onerous requirements that were not included in the Act 69 amendment to Section 601 of the Act. The regulations require specification of the job classification or classification series to which the alternative rule will apply. This language ignores the concept of "vacancy-based" hiring. Act 69 amended Section 602 of the Act to permit vacancy-based postings. SCSC's regulatory requirement would preclude DEP from seeking an alternative to the Rule-of-Three for vacancy-based postings. For DEP, this regulatory change poses a significant potential negative impact. DEP hires numerous Environmental Trainees each year. It is our most commonly filled job title and successful completion of a training year leads to promotion to an inspector job title. Offices will often conduct interviews for multiple positions at the same time. An alternative Rule-of-Three would allow a greater candidate pool from which to make multiple selections, thereby increasing the odds that the various supervisors will be able to select a candidate that meets their program needs.

Further, the proposed regulations force DEP to keep the alternative to the Rule-of-Three in place for at least 12 months. This provision will dissuade DEP from using an alternative to the Rule-of-Three. There will be uncertainty as to how effective the alternative Rule is for these positions until it is implemented. In the event the alternative Rule is not effective; the regulation would have DEP stuck using the alternative Rule for at least one year. Therefore, DEP would be forced to continue using the Rule-of-Three for most or all positions instead of taking a chance on how the alternative Rule may work for filling positions.

#### **Section 98.1 and 98.2. Vacancy-Based Hiring.**

Act 69 was intended to allow agencies to fill vacant positions as they occur through "vacancy-based" job postings. This is how jobs are posted in the private sector and how DEP would like to post most of its job openings. DEP would specifically prefer to use vacancy-based postings for positions in the Geologist, Environmental Engineering, Civil Engineering, Air Quality Engineering, Chemist, Microbiologist, Radiation Health, Water Pollution Biologist, various Program Specialists, and various Information Technology job series. DEP is the primary user for

all of these environmental specialty job series. Aside from Environmental Trainee, appointments to these job titles constitute most of our agency's hiring actions.

Vacancy-based hiring would greatly benefit DEP in the hiring of Civil Engineer Trainees. Currently, the job has an E&T that results in a block score and it is routine to see upwards of 50 people in the Rule-of-Three. This is unmanageable for both HR staff and the interviewing supervisor. This particular E&T benefits the Department of Transportation (PENNDOT), as they hire large "classes" of Civil Engineer Trainees, who participate in an agency rotational program to learn various functional areas administered by PENNDOT. At DEP, Civil Engineer Trainees are hired into a single position in a single program area. Asking a supervisor to perform 50-plus interviews is a formidable and unnecessarily burdensome task. Further, the cost of mailing availability surveys for one position is excessive. Tracking a significant number of candidates when interviewing is also extremely difficult. It results in the interview and selection process taking weeks longer than with other job titles. Requiring interested parties to apply to specific postings would result in smaller, more manageable candidate pools.

In addition, DEP believes that we are in a better position to know which jobs should be done though vacancy-based posting. We recognize that testing is an important tool that would still be appropriate for certain jobs like Environmental Trainee or Clerk Typist 2, where the minimum experience and training requirements are quite broad. But for jobs in which DEP is the only user and the minimum experience and training requirements are more prescribed, we want to use vacancy-based postings but believe the proposed regulations are an impediment to do so.

Vacancy-based posting would be especially beneficial to DEP for posting positions that have very specific requirements such as professional licensure for engineers or geologists, or certain skills for information technology job titles. Allowing for vacancy-based postings to screen applicants for the required experience or licensure would eliminate the need for selective certifications issued by SCSC. Currently, DEP requests a selective certification and SCSC surveys the candidates who have taken and passed the test. SCSC then refer the candidates to us via a selective certification list. The agency must survey the candidates again; this time to see if they are interested in the position and wish to make themselves available. This process regularly adds ten days to the job filling process.

The remote geographic nature of some of our offices is also a consideration when considering vacancy-based postings. As previously mentioned, the remote location of some offices can lead to difficulty in recruiting candidates to take exams. Typically, candidates who indicate they will accept employment in the county where the vacancy is headquartered are the only ones surveyed for eligibility. While the Commission does allow agencies to survey contiguous counties, this is not an efficient use of Commonwealth resources. For example, Lycoming County has nine contiguous counties. Depending on the job title, this could be a large amount of unnecessary paper and postage expended on recruitment for a single position. Vacancy-based postings would eliminate this potentially wasteful practice.

### **Comments on the Regulatory Analysis Form**

In addition to reviewing the proposed regulatory amendments included in this rulemaking package, DEP also reviewed the regulatory analysis form (RAF) that accompanies this proposed rulemaking and offers the following comments.

Question 12 asks how the proposed regulations compares with those of other states and if the regulations will affect Pennsylvania's ability to compete with other states. SCSC responded that nothing in the proposed regulatory amendments would provide the Commonwealth with either an advantage or disadvantage as compared with other states. DEP contends that, while the proposed regulatory amendments may not disadvantage Pennsylvania's ability to regulate its own civil service system, the amendments will impair and/or disadvantage the collective ability of Commonwealth agencies to recruit qualified candidates. Per the Act, most job positions require Pennsylvania residency. However, certain job positions do have residency waivers because they are more difficult to fill. Therefore, the Commonwealth does compete with other states, primarily with our contiguous neighbor states. We also compete with the federal government and local government, as well as non-profits.

Question 14 asks for a description of communications with and solicitation of input from stakeholders in drafting the proposed regulatory amendments. SCSC answered that the regulations were developed using a committee comprised entirely of employees of the SCSC. This is indicative of a deficient stakeholder outreach effort for the development of regulatory amendments. Developing these regulatory amendments with no outreach beyond SCSC implies a disregard and disrespect for the collective experience and opinions of Commonwealth HR professionals who apply and abide by the rules. SCSC's purpose is to be a customer-service organization designed to administer a merit system for agencies under the Governor's jurisdiction. However, SCSC continuously shows a lack of interest in applying basic customer service principles for its clients (i.e. Commonwealth HR professionals). DEP suggests that SCSC work to improve customer relations by assisting and adapting to clients' needs and instituting new and improved processes like those intended in both Act 69 and Act 167, respectively, for the benefit of all Commonwealth HR professionals, current civil service employees, and prospective candidates for SCSC job positions.

Question 15 requests the identification of the types and number of persons, businesses, small businesses and organization that will be impacted by the proposed regulations and how they will be affected. SCSC responded that no private sector business entities will be affected and that only Commonwealth agencies who employ civil service employees, persons who are already civil service employees, and persons who are seeking to become civil service employees will be affected. This statement is incorrect. Local governments who contract their merit hiring to the SCSC will also be impacted.

Question 17 requests the identification of the financial, economic, and social impact of the regulation. SCSC responded that there will be no financial, economic, or social impact. DEP contends that this statement is inaccurate. Agencies will experience a negative fiscal impact if

they have to continue to print and mail extensive availability surveys, or pay to advertise localized exams in newspapers and online sources, as the proposed regulations would require.

Question 22 asks if additional forms or paperwork is required for the implementation of this regulation. SCSC responded that there are no additional forms or paperwork requirements associated with this regulation. DEP contends that this statement is inaccurate. New forms will need to be created to request alternative rule of three or vacancy-based E&T exams.

Question 26 requests a description of any alternative regulatory provisions that have been considered and rejected and an explanatory statement regarding these considerations. SCSC responded that the regulatory changes closely adhere to other existing Pennsylvania laws or to the recent amendments to Act 69 and Act 167. Alternative regulatory provisions were thus not considered as SCSC determined that the proposed regulations represent the least burdensome method of compliance with the law. DEP contends that the proposed regulatory amendments are unduly burdensome. The additional approvals required for alternative rule of three or vacancy based E&T exams will require agency HR staff to divert time and energy to this unnecessary bureaucratic exercise, rather than allowing them to more easily assist their agency supervisors in filling positions.

Question 30 requests the description of the plan developed for evaluating the continuing effectiveness of the regulations after implementation. SCSC stated that it will work closely with the Office of Administration and the HR offices of all agencies who employ civil service personnel on a going forward basis. DEP is concerned, given the lack of stakeholder outreach in the development of the regulations, that the same level of outreach will be employed in the implementation. DEP is not confident that necessary input from agencies will be solicited or considered.

### **Conclusion**

DEP contends that Commonwealth agencies need to be have the flexibility to recruit the best candidates to collectively provide optimal services to all Pennsylvania residents and to protect their health and safety. As highlighted throughout these comments, these proposed regulatory amendments fall far short of meeting that need. The residents of this Commonwealth deserve better and Act 69 and Act 167 were intended to allow agencies to more easily recruit qualified candidates thereby allowing agencies to better provide services for which every resident is entitled.

DEP appreciates the Commission's review of these comments and careful consideration of the numerous harmful effects the proposed regulations would have on this agency should they be codified as written.

Please contact DEP's Executive Deputy Secretary for Administration and Management, Darrin Bodner (dbodner@pa.gov), if you need any additional information or have any questions on the matters addressed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick McDonnell". The signature is written in a cursive style with a large, stylized initial "P".

Patrick McDonnell  
Acting Secretary

cc: Bryan R. Lentz, Chairman  
Pennsylvania State Civil Service Commission



**DEP – RECOMMENDED AMENDMENTS**

*Deletions are signified by strike-through and additions are underlined and bolded.*

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART IV. CIVIL SERVICE COMMISSION**

**Subpart A. RULES OF THE CIVIL SERVICE COMMISSION**

**CHAPTER 91. GENERAL PROVISIONS**

**§ 91.3. Definitions.**

Words, terms and phrases, when used in this part, have the meaning 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. §§ 741.1—741.1005).

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

*Appointing authority*—The officers, board, commission, person or group of persons having power by law to make appointments in the classified service.

\* \* \* \* \*

*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.

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

**EXAMINATIONS REQUISITE FOR APPOINTMENT AND PROMOTION**

**§ 95.1. Application requirements.**

(a) *Submission of applications.* Applications required of a candidate for entrance to, or promotion in, the classified service ~~[, shall] must be made in a format prescribed by the Director~~ ~~{and shall}, shall~~ utilize a form and method of application that is standard across departments and agencies that are under the Governor's jurisdiction, and 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.

\* \* \* \* \*

**CONDUCTING EXAMINATIONS AND RATING COMPETITORS**

**§ 95.20. Authority.**

Examinations for all classified service positions will be prepared and approved by the Director or designee. ~~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, t~~ ~~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 shall 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 or designee, appointing authorities ~~[shall]~~ may not develop and administer their own examinations for employment or promotion in the classified service.

**RATINGS OF COMPETITORS**

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

\* \* \* \* \*

(c) *By private individuals other than the candidate.* The Director or designee 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 or designee 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, 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))] 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 will be denied.**

**§ 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] may 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.

**RATINGS OF COMPETITORS**

**§ 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 calendar days of receipt of notice of the] 20 calendar days of the date of notice of the examination result** being challenged. The Director **or designee** 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).

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

**CERTIFICATION**

**§ 97.3. Certification of eligible lists.**

(a) General content of certification. The Director **or designee** 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 **or designee** 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 **or designee**, and appointive action may be initiated at any time within that period.

## SELECTION AND APPOINTMENT OF ELIGIBLES

### § 97.11. Appointment process.

(a) *Right of choice in making appointments and promotions when using the rule of three.* [The rule-of-three] Unless permission approval has been obtained from the Director or designee 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 wants to use an alternative rule to the rule of three for its appointments to a specific position or classification or classification-series, it shall obtain permission approval from the Director or designee by submitting a request in writing to the Director or designee which satisfies all of the following conditions:

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

(2) The request shall 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 or classification-series which is subject to the request. ~~If a request is not made for an alternative rule, the rule of three applies and shall be used for at least 12 months before a request for an alternative rule can be initiated.~~

~~(3) Once approved by the Director, the alternative rule shall be used by the appointing authority for all selections it makes in the specified classification or classification-series for at least 12 months before a new alternative rule request for the same classification can be initiated.~~

~~(34) The appointing authority shall receive written permission approval from the Director or designee to use the alternative rule prior to making any selections using the alternative rule.~~

~~(45) 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. Appointments using the new rule cannot be made before written permission approval is obtained from the Director or designee. An appointing authority shall continue to use the same alternative rule to make all appointments and promotions in the specified classification or classification-series for at least 12 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.

**§ 97.12. Rejection of eligibles—passovers.**

\* \* \* \* \*

(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.

**PROBATIONARY PERIOD**

**§ 97.31. Duration and extension of probationary periods.**

\* \* \* \* \*

(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 under section 951(b) of the act (71 P.S. § 741.951(b)).

[(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.]

**§ 97.38. Probation following promotion.**

A [promoted employee] regular status employee who is promoted shall serve the probationary period of the duration specified for the class to which promoted, subject to all of 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 does not have a right to return to a probationary status position previously held.**

### CLASSIFICATION STANDARDS

#### § 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.

*(Editor's Note: The following chapter is new and printed in regular type to enhance readability.)*

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

Sec.

98.1. Vacancy-based eligible lists.

98.2. Requesting a vacancy-based examination announcement.

#### § 98.1. Vacancy-based eligible lists.

**If** ~~When~~ an appointing authority **requests a certification of eligibles** ~~receives permission~~ from the Director **or designee** to fill a vacant position under section 602(a)(2) of the act (71 P.S. § 741.602(a)(2)), 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 **appointing authority**. ~~Commission~~

#### § 98.2. Requesting a vacancy-based examination announcement.

(a) ***Permission Action of the Director or designee.*** An appointing authority electing to fill a vacant position under section 602(a)(2) of the act (71 P.S. § 741.602(a)(2)) shall prepare a

request ~~for the creation and certification of eligible for the vacant position~~ and submit it to the Director or designee for approval. If the Director or designee approves the request, the Director or designee 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 shall have completed the applicable civil service examination to be eligible for selection, the Director or designee will certify the names of those who responded by applying for the vacancy as many eligibles as necessary to satisfy the employment requirements of the appointing authority. Each certification will indicate the relative ranks of the applicants and 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 procedures in §§ 97.11—97.16 (relating to selection and appointment of eligibles).

## CHAPTER 99. EMPLOYEES IN THE CLASSIFIED SERVICE

### Subchapter C. REASSIGNMENTS AND TRANSFERS

#### § 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.**

## CHAPTER 103. PROHIBITIONS, PENALTIES AND ENFORCEMENT

### POLITICAL ACTIVITY, ASSESSMENTS AND DISCRIMINATION

#### § 103.11. Exception to prohibited political activities.

(a) Notwithstanding the political activities expressly prohibited by the act, classified service **[employees] 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] employee who is the candidate. For other civil service [employees] 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] employee who has been furloughed or who is on a regular unpaid leave of absence, [or] a leave of absence to take a noncivil service position or a leave of absence subject to 71 Pa.C.S. § 5302(b) (relating to credited State service) to serve as an elected full-time officer for a Statewide employee collective bargaining organization. An**

**Subpart B. EXECUTIVE DIRECTOR OF CIVIL SERVICE**

**CHAPTER 110. DOCUMENTARY FILINGS AND REPRODUCTION OF RECORDS**

**Subchapter A. DOCUMENTARY FILINGS**

**§ 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).



**Cheryl Yohn**

---

**From:** Edinger, Laura <ledinger@pa.gov>  
**Sent:** Monday, May 22, 2017 2:39 PM  
**To:** IRRRC  
**Cc:** Shirley, Jessica; Hudock, Vincent  
**Subject:** DEP Comments on Proposed Regulation; IRRRC #3167  
**Attachments:** SCSC Comments 5.22.17\_DEP.pdf

Good Afternoon,

Please find attached the comments of the Pennsylvania Department of Environmental Protection for Proposed Regulation #61-6 (IRRC #3167): Implementation of Acts 69 and 167 of 2016.

Thank you,

**Laura Fusare Edinger** | Regulatory Coordinator  
Department of Environmental Protection | Policy Office  
Rachel Carson State Office Building  
400 Market Street | Harrisburg, PA  
Phone: 717.783.8727 | Fax: 717.783.8926  
[www.dep.pa.gov](http://www.dep.pa.gov)

**PRIVILEGED AND CONFIDENTIAL COMMUNICATION**

*The information transmitted is intended only for the person or entity to whom it is addressed and may contain confidential and/or privileged material. Any use of this information other than by the intended recipient is prohibited. If you receive this message in error, please send a reply e-mail to the sender and delete the material from any and all computers.*

2017 MAY 22 PM 3:58  
RECEIVED  
IRRC