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DEPARTMENT OF AGRICULTURE

May 8, 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

Dear Commissioners:

On April 22, the Pennsylvania State Civil Service Commission (SCSC) had published in the Pennsylvania Bulletin, proposed regulations for Act 69 of 2016 and Act 167 of 2016. The Pennsylvania Independent Regulatory Review Commission (IRRC) 30-day comment period on the proposed regulations is open from April 22 to May 22. The Department of Agriculture (PDA) has serious concerns regarding the impact the proposed regulations will have on us and are providing comments to the proposed regulations. Please note that SCSC did not contact us to solicit our input on these proposed regulations.

Last year, the General Assembly passed and Governor Wolf signed into law Acts 69 and 167 of 2016. These laws made very significant and important changes to the Pennsylvania Civil Service Act (the Act). In short, these statutory amendments were enacted to modernize how hiring is done through the SCSC and to improve service delivery. The changes would make it easier for candidates to apply for positions, create a larger pool of candidates from which agencies could choose, and give the agencies the ability to decide the method of examinations to be used in evaluating candidates for positions. Instead of implementing the law as written, SCSC has decided to issue proposed regulations which will undermine the intended purpose of the laws and give SCSC the ability to thwart the implementation of them.

Approximately 27 percent of PDA positions are covered by the SCSC. Therefore, we have a very significant and personal stake in having the laws implemented as written and intended. We are providing the below specific examples of how the legislative changes will allow PDA to improve services and how the proposed regulations will negatively impact our service delivery.

**Section 95.1. Application requirements.**

Act 167 amended Section 212 (d) of the Act was amended to provide: "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." 71 P.S. §741.212(d).

PDA has both civil service and non-civil service positions. 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. By providing clear direction to one location it will save potential candidates time and frustration and will also make it easier for non-human resource staff such as hiring managers, employees, etc., to provide information to potential candidates in the future.

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

Act 167 amended Section 502 of the Act to allow the appointing authority (the agency), and not SCSC, to determine the method of the “examinations.” SCSC currently uses written tests or experience and training (E&T) to evaluate candidates for positions. However, PDA is in a better position to know how candidates can best be evaluated for our specific positions. For example, we recommended we utilize the E&T evaluation process for the Food Inspection Technician job title, however, the written examinations were recommended to be utilized for the Food Inspector job series and the Microbiologist series due to the specific skill set and knowledge needed and was easily demonstrated through a question and answer exam.

Written exams are not the answer to every job title due to the fact that candidates must take time off work and drive to one of the six SCSC test sites for written exams. For example, PDA hires a large field staff in every county within the state. When we fill jobs such as the Domestic Animal Health Inspector in a rural area and utilize a written exam, the closest testing location may be hours away from potential candidates. This could potentially deter good candidates from applying and being considered for upcoming vacancies.

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

Act 69 amended Section 601 to allow expansion of hiring eligible lists other than the standard “Rule-of-Three.” With the standard Rule-of-Three, PDA had difficulty filling certain positions. Specifically, there was difficulty filling Information Technology Generalist positions utilizing the “Rule-of-Three” due to lack of interest in a specific position and lack of needed skillsets. If PDA would have been able to utilize a larger “Rule” we would have been able to move quicker through the process and find more than one suitable candidate. In addition, PDA hires limited term positions specifically in the Food Inspection Technician job title. If we would have been able to utilize a larger “Rule” a larger candidate pool could have been interviewed and considered in one-time frame verses multiple periods of interviews due to the constant changing of the “Rule-of-Three” when hiring for multiple positions. In addition, the regulations have onerous requirements that were not in the Act 69 amendment to Section 601.

First, the regulation requires 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. This regulatory requirement would preclude PDA from seeking an alternative to the Rule-of Three for vacancy-based postings. For PDA, the regulations pose a significant potential negative impact. By having the requirement to identify job classifications and classification series this would require an upfront decision on the Rule and not allow for changes when a larger Rule would be necessary for finding a suitable candidate without civil service approval. This type of request could again add more time to the hiring process and impact public safety when it comes to food, plant and animal inspections.

Second, the regulation forces us to keep the alternative to the Rule-of-Three in place for at least 12 months. This will dissuade PDA from making quick employment decisions. Specifically, we have a large number of field positions. It is imperative that the agency review the candidate list to determine

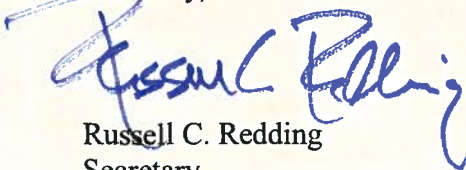
the Rule based on the number of candidates in each and the timeframe needed to fill the vacancy. Each list for a specific county could vary in the number of eligibles, and therefore changing the Rule to find a suitable candidate will be needed. In addition, PDA hires candidates for limited term positions and these need a quick turnaround time due to the utilizing of federal funds. It is important to fill positions as timely as possible to avoid the returning of funds and to allow for public safety inspections, specifically in the Bureaus of Food Safety and Plant Industry. 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 require PDA to be locked into using the alternative Rule for at least one year. Therefore, PDA will 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 out 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 PDA wants to post most of its job openings. We specifically want to use vacancy-based postings for Food Inspectors/Technicians, Plant Industry Inspection Technicians, Plant Industry Program Specialists, Plant Pathologists, Pesticide Specialists, Microbiologists, Laboratory Technicians, etc. Although we do not fill large quantities of these positions, a "vacancy-based" posting will allow for interested candidates to apply for specific vacancies rather than being on a list for two or more years and no longer being interested. In addition, PDA believes that we, and not SCSC, are in a better position to know which jobs should be done through vacancy-based posting. For example, with non-civil service positions such as Livestock Workers, Equipment Operators, Dog Law Enforcement Wardens, Special and Field Investigators, senior-level positions, Administrative Officer, etc. Similarly, we want to use vacancy-based postings for civil service positions, but believe the regulation is an impediment to do so.

The Department of Agriculture appreciates the Commission's review of our comments to the proposed regulations and your consideration of the many negative effects of the proposed regulations on this agency if they are adopted as written. Please contact me if you need any additional information on the matters addressed in this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Russell C. Redding". The signature is stylized and cursive.

Russell C. Redding  
Secretary