



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF ADMINISTRATION

May 16, 2023

David Sumner
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

**Subject: State Civil Service Commission
Final-Omitted Regulation
No. 61-13, IRRC No. 3371**

Dear Executive Director Sumner:

The Commonwealth of Pennsylvania, Office of Administration (OA) has reviewed the above-identified regulation, which was submitted by the State Civil Service Commission (SCSC) on April 12, 2023. OA is pleased that SCSC seeks to rescind various provisions of its regulations, which became obsolete upon the enactment of the Civil Service Reform Act (CSRA), Act of June 28, 2018, P.L. 460, No. 71, effective March 28, 2019, *codified at* 71 Pa.C.S. Part III. However, contrary to SCSC's answer in paragraph 13 of the Regulatory Analysis Form, SCSC's intended retention of certain regulatory provisions will adversely affect OA's current temporary regulations and upcoming proposed regulations, and far exceeds the limited scope of SCSC's regulatory authority.¹

In March 2018, the General Assembly unanimously passed, and Governor Wolf signed into law, the CSRA, which transferred administrative authority over the Commonwealth's merit system of employment from SCSC to OA and vested in SCSC adjudicative authority over appeals arising under Section 3003(7), 71 Pa.C.S. § 3003(7). Consequently, SCSC's regulatory authority is limited to only those provisions necessary to effectuate its adjudicative authority. *Id.* § 3003(1). Conversely, Section 2203 of the CSRA grants OA broad regulatory authority over the development and administration of the merit system. To that end, OA maintains temporary regulations, which provide definitions for terms used throughout the CSRA and regulations, and address topics germane to the application to, and employment in, the Commonwealth's merit system.

Presently, SCSC intends to retain various regulatory provisions, the substance of which infringe upon OA's exclusive regulatory authority and, in some instances, directly contradict OA's current temporary regulations. OA will address each regulatory provision in turn.

¹ OA's current temporary regulations are published at 4 Pa.Code §§ 601a.1-607a.29. OA anticipates submitting proposed final regulations in late 2023.

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4 Pa.Code § 91.3 (relating to definitions)

SCSC intends to retain Section 91.3 of its regulations, which sets forth various definitions of terms used throughout the CSRA. The vast majority of terms defined by Section 91.3 relate to the administration of the merit system and, thus, fall under OA's exclusive regulatory purview. Moreover, many of the definitions directly conflict with those adopted by OA through its temporary regulations, *see* 4 Pa.Code § 601a.3 (relating to definitions), thereby risking needless confusion to applicants to, and employees in, the merit system. As such, Section 91.3 of SCSC's regulations must be rescinded and, if necessary, a new regulatory provision should be adopted setting forth definitions of terms relevant to SCSC's adjudicative authority.

4 Pa.Code § 91.4 (relating to classified service coverage)

SCSC intends to retain Section 91.4 of its regulations, which purports to establish the guidelines for determining whether a position is included or excluded from merit system coverage. This provision directly contradicts Section 601a.13 of OA's temporary regulations, 4 Pa.Code § 601a.13, which addresses the exclusion of positions from merit system coverage and implements the definition of "unclassified service" contained in Section 2103 of the CSRA, 71 Pa.C.S. § 2103 (definition of "unclassified service").

The rules governing exclusion of positions from merit system coverage do not relate to SCSC's adjudicative authority and instead pertain to administration of the merit system. As such, retention of Section 91.4 of SCSC's regulations is unnecessary and infringes upon OA's exclusive regulatory purview. Moreover, as Section 91.4 directly conflicts with Section 601a.13 of OA's temporary regulations, SCSC's retention of the provision needlessly risks confusing appointing authorities and employees with respect to the process and criteria for excluding positions from merit system coverage. Accordingly, the provision must be rescinded.

4 Pa.Code § 99.31 (relating to reductions of pay within the same class)

SCSC intends to retain Section 99.31 of its regulations, which purports to establish the circumstances under which an appointing authority may reduce the salary of an employee employed in the merit system. The provision further provides that a reduction in pay is appealable to SCSC.

To the extent this provision addresses the circumstances under which an appointing authority may reduce an employee's salary, such topic does not relate to SCSC's adjudicative authority and instead pertains to administration of the merit system. As such, the provision falls under OA's exclusive regulatory purview. Moreover, although the provision addresses whether a reduction in pay is appealable to SCSC, it is inappropriate for SCSC to maintain the provision as a whole, given its encroachment over OA's regulatory authority. Rather, the more prudent action would be for SCSC to rescind the provision, in full, and promulgate a new provision addressing whether a reduction in pay is appealable under Section 3003(7) of the CSRA. Accordingly, Section 99.31 of SCSC's regulations must be rescinded.

4 Pa.Code § 105.2 (relating to personnel actions)

SCSC intends to retain Section 105.2 of its regulations, which purports to set forth a list of personnel actions requiring written notice to the affected employee. This provision is nearly identical to Section 606a.1 of OA's temporary regulations, 4 Pa.Code § 606a.1, which implements Section 2801(a) of the CSRA, 71 Pa.C.S. § 2801(a). Specifically, Section 2801(a) of the CSRA requires that "[w]ritten notice of a personnel action taken under [the CSRA] shall be provided to the affected employee." *Id.* § 2801(a).

The determination of which personnel actions require written notice under Section 2801(a) of the CSRA does not relate to SCSC's adjudicative authority and instead pertains to administration of the merit system. As such, retention of Section 105.2 of SCSC's regulations is unnecessary and infringes upon OA's exclusive regulatory purview. Accordingly, the provision must be rescinded.

4 Pa. Code § 105.4 (relating to signatory authority)

SCSC intends to retain Section 105.4 of its regulations, which purports to establish the rules governing authority to sign notices of personnel actions furnished to employees. This provision dramatically conflicts with Section 606a.3 of OA's temporary regulations, 4 Pa.Code § 606a.3, which addresses the same topic. Notably, Section 606a.3 of OA's temporary regulations implements Section 2801 of the CSRA, 71 Pa.C.S. § 2801, which requires that "[w]ritten notice of a personnel action taken under [the CSRA] shall be provided to the affected employee."

The rules governing authority to sign notices of personnel actions furnished to employees under Section 2801 of the CSRA do not relate to SCSC's adjudicative authority and instead pertain to administration of the merit system. As such, retention of Section 105.4 of SCSC's regulations is unnecessary and infringes upon OA's exclusive regulatory purview. Moreover, as Section 105.4 directly conflicts with Section 606a.3 of OA's temporary regulations, SCSC's retention of the provision needlessly risks confusing appointing authorities and employees with respect to signatory authority for notices of personnel actions. Accordingly, the provision must be rescinded.

For the reasons expressed herein, OA respectfully requests that the Independent Regulatory Review Commission disapprove the retention of Sections 91.3, 91.4, 99.31, 105.2, and 105.4 of SCSC's regulations and direct SCSC take the necessary steps to rescind these provisions.

Respectfully Submitted,



Neil R. Weaver
Secretary

cc: Keith A. Herbster, Chief Counsel, OA
Elizabeth Lawson, Chief Counsel, SCSC