

# RULES AND REGULATIONS

## Title 4—ADMINISTRATION

### STATE CIVIL SERVICE COMMISSION

#### [4 PA. CODE CHS. 91, 93, 95, 97, 99, 101, 105 AND 110]

#### Act 140 Implementation

The State Civil Service Commission (Commission), under the authority of section 203(1) of the Civil Service Act (act) (71 P. S. § 741.203(1)), amends Chapters 91, 93, 95, 97, 99, 101, 105 and 110 to read as set forth in Annex A

#### *Omission of Proposed Rulemaking*

Under authority of section 204(1) and (3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1) and (3)), known as the Commonwealth Documents Law, the Commission has omitted proposed rulemaking. As is more fully explained, proposed rulemaking has been omitted because:

(a) Civil service rules regulate the State-classified service only and are, therefore, either personnel rules or related to agency procedure or practice.

(b) Most of the amendments change existing regulations to conform with the requirements of the act of November 27, 2002 (P. L. 1129, No. 140) (Act 140), which amended the act, or the Americans With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213), and are therefore the result of self executing legislation.

(c) The other amendments update Commission administrative practices and procedures with regard to, inter alia, recordkeeping, managing eligible lists and conducting administrative hearings.

(d) Public comment is unnecessary because the amendments are legislatively mandated or reflect established, ongoing agency personnel practices and procedures, or both, and the Commission has already sent copies of the proposed amendments to its client State agencies, solicited their comments and incorporated many of their suggestions, including those forwarded to the Commission by the Office of General Counsel. In addition, under section 208 of the act (71 P. S. § 741.208), the Commission has advertised and held public hearings in Harrisburg (October 14, 2003), in Pittsburgh (October 20, 2003) and in Philadelphia (November 3, 2003) seeking public comment. Despite advertising these meetings and posting the proposed amendments on the Commission's website along with the meeting dates and times, no member of the public appeared to comment at any of these meetings. Therefore, the Commission in good faith has determined that the solicitation of additional public comments is unnecessary.

#### *Description and Reasons for Final-Omitted Rulemaking*

The following provisions are affected or added by these amendments:

In § 91.3 (relating to definitions), the definitions of various personnel terminology ("demotion," "permanent position," "probationary period," "promotion," "promotion examination" and "temporary position") have been slightly amended to eliminate confusion or to conform to changes in definitions that were made in Act 140, or both. A definition for "regular status," which was not previously defined in this section, has been added.

Sections 91.4, 95.1a, 95.2, 95.33, 97.3, 97.31, 97.33, 97.37, 97.39, 97.51, 99.11, 99.13, 99.26, 101.21, 101.31, 101.32 and 105.1 are amended expressly to conform to the changes enacted by Act 140.

The amendment to § 93.1 (relating to meetings of Commission) clarifies that the Commission has the authority to reschedule a public meeting upon "appropriate public notice."

Section 95.1 (relating to application requirements) is amended expressly to conform to the changes enacted by Act 140 and to satisfy requirements of the ADA.

Section 95.6 is rescinded, as it is not currently being used by the Commission for any classification.

Section 95.7 (relating to promotion procedure) is amended expressly to conform to the changes enacted by Act 140 and to conform to the Commission's present practice and procedure governing the use of the unqualified recommendation for promotion candidates.

Section 95.14 (relating to use of class specifications in examinations) is incidentally amended for clarification only and to satisfy requirements of the ADA.

Section 95.21 (relating to scheduling of examinations) is amended to clarify that the Director has the authority to postpone, cancel and reschedule civil service examinations as necessary.

Section 95.22 (relating to administration and scoring of examinations) is incidentally amended for clarification only.

Section 95.23 (relating to security of competitive standards) is amended to clarify that most civil service testing is by computer and, therefore, paperless.

Section 95.32 (relating to special assistance in recruitment) is amended expressly to conform to the changes enacted by Act 140. Specifically, the requirement that public notices of examinations be disseminated in a particular way for every examination was eliminated by the amendment to section 504 of the act (71 P. S. § 741.504).

Section 95.41 (relating to preservation of examination records) is amended incidentally for clarification and also to conform to current Commission practices and procedures.

Section 95.42 (relating to preservation of examination records) is incidentally amended for clarification and to eliminate confusion. Eligible lists are constantly changing as things are added and removed. This process is done by computer and any eligible list that existed at any point in time is able to be reconstructed electronically thereafter. As formerly worded, § 95.42 implied that there is a single, unified eligible list that results from a single examination. In the age of computerized testing, this is no longer the case.

Sections 95.43 and 95.44 (relating to inspection of examination records; and information regarding unsuccessful candidates) are amended incidentally for clarification. Almost all civil service testing is by computer and, therefore, paperless.

Section 95.51 (relating to eligible lists) is amended to clarify who is a "successful candidate." The previous language of § 95.51 did not define this term adequately.

Section 95.52 is rescinded.

Sections 95.61 and 95.63 (relating to extension and cancellation of eligible lists; and amendment of an eligible list) are amended to clarify that eligible lists are now electronic and are changing constantly.

Section 97.4 (relating to effect of appointment from list) is amended incidentally to eliminate confusion. The amendment is not substantive.

Section 97.12 (relating to rejection of eligibles—passovers) is amended to clarify that an eligible that has three pass overs can immediately reexamine for the position. This conforms to existing practice and procedure of the Commission.

Section 97.13 (relating to removal of eligible) is amended to clarify that there is already in place an established procedure for this process.

Section 97.63 (relating to working out-of-class) is amended to clarify that an employee must already be a member of the classified service to work out-of-class in another position in the classified service. This conforms to Commission practice and procedure.

Sections 99.1, 101.41, 105.3 and 105.11 are amended expressly to conform to the changes enacted by Act 140. The requirement was removed by Act 140.

Section 99.22 (relating to initiation of transfer) is amended to clarify that the form described is no longer printed by the Commission as it is available for downloading and printing from the Internet.

Section 105.13 (relating to form of hearing) is amended to conform to the current practices and procedures of the Commission to utilize a hearing examiner to hear some civil service appeals. The Commission has the authority to employ hearing examiners to conduct its hearings. *Bosjak v. State Civil Service Commission*, 781 A.2d 1280 (Pa. Cmwlth. 2001).

Section 105.14a (relating to subpoenas) is amended to conform to current Commission practices and procedures in the use of subpoenas. The Commission's authority to issue subpoenas is established by section 209 of the act (71 P. S. § 741.209).

Section 105.14d (relating to prehearing conferences) is added to set forth the Commission's current practices and procedures for holding and conducting prehearing conferences for civil service appeals. The Commission's authority to hold prehearing conferences is provided by 1 Pa. Code § 35.113 (relating to initiation of conferences).

Sections 110.24 and 110.25 (relating to documents which may be furnished without charge; and documents which may not be furnished without charge) are amended to recognize that many "records" are now computerized and, therefore, may not necessarily be recorded on "paper."

Section 110.28 (relating to records retention) is amended to conform to current Commission practices and procedures under its existing policy on records retention. The modification also clarifies that Commission records may be either in hardcopy or stored electronically.

*Paperwork*

The final-omitted rulemaking will reduce existing paperwork requirements by eliminating the need for appointing authorities to send unnecessary copies of notices to the Commission.

*Fiscal Impact*

The final-omitted rulemaking will have no adverse fiscal impact on the Commonwealth or its appointing

authorities and should result in cost savings to both the appointing authorities and applicants for civil service examinations.

*Regulatory Review*

Under section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)), on December 22, 2003, the Commission submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees. A copy of this material is available to the public upon request.

Under section 5.1(j.2) of the Regulatory Review Act, on February 11, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 12, 2004, and approved the final-omitted rulemaking.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative regulation adopted by this order has been omitted under sections 204(1) and (3) of the act of July 31, 1968 (P. L. 769, No. 240).

(2) The adoption of these amendments by the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the act and Commission regulations appearing in 4 Pa. Code (relating to administration).

*Order*

The Commission, acting under the authority of the act, orders that:

(a) The regulations of the Commission, 4 Pa. Code Chapters 91, 93, 95, 97, 99, 101, 105 and 110, are amended by amending §§ 91.3, 91.4, 93.1, 95.1, 95.1a, 95.2, 95.7, 95.14, 95.21—95.23, 95.32, 95.33, 95.41—95.44, 95.51, 95.61, 95.63, 97.3, 97.4, 97.12, 97.13, 97.31, 97.33, 97.37, 97.39, 97.51, 97.63, 99.11, 99.13, 99.22, 101.21, 101.31, 101.32, 105.1, 105.3, 105.11, 105.13, 105.14a, 110.24, 110.25 and 110.28; by deleting §§ 95.6, 95.52, 99.1, 99.26, 101.41; and by adding § 105.14d to read as set forth in Annex A.

(b) The Executive Director of the Commission shall submit this order and Annex A to the Office of Attorney General for approval as to legality and form as required by law.

(b) The Executive Director of the Commission shall submit this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

RONALD K. ROWE,  
*Executive Director*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 1297 (February 28, 2004).)*

**Fiscal Note:** 61-05. No fiscal impact; (8) recommends adoption.

## 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).

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

*Certification*—The referral of one or more eligibles by the Director to an appointing authority, in order to fill one or more positions or to take appropriate classification action.

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

*Classification plan*—A plan consisting of a schedule of class titles and related codes arranged according to a series of classes and occupational services, including class specifications for each class, as approved by the Executive Board.

*Commission*—The State Civil Service Commission of the Commonwealth.

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

*Director*—The Executive Director of the Commission.

*Eligible*—A person whose name is on an eligible list.

*Eligible list*—An employment list, promotion list, or reemployment list.

*Emergency employee*—A qualified person hired by an appointing authority to meet an unexpected need and whose tenure will be not more than 60 work days.

*Employee*—A person legally occupying a position in the classified service.

*Employment list*—A list of persons who have been found qualified by an entrance examination for appointment to a position in a particular class.

*Entrance examination*—An examination for positions in a particular class, admission to which is not limited to persons employed in the classified service.

*Examination*—A test, series of tests, or assessments used to determine the degree to which applicants or employees are qualified for appointment or promotion and

includes, but is not limited to, written tests, oral tests, ratings of qualifications, performance tests, medical tests, physical or agility tests, personality or interest inventories, and biographical inventories.

*Furlough*—The termination of employment because of lack of funds or work.

*Intermittent position*—A position filled from an eligible list and utilized by an appointing authority on a periodic or recurrent basis.

*Leave of absence*—A temporary interruption of employment for which the employee is given a specified period of leave without pay for purposes such as illness, school attendance, cyclical employment, military duty or training or employment in a noncivil service position.

*Limited term employment*—Work that is usually a standard workweek for a specified period of time.

*Minimum qualifications*—The education, experience, licensure, certification or other requirements which are established in the classification standards for a class and which must be met by applicants or employees seeking appointment or promotion.

*Part-time employment*—Work that is less than the standard workweek.

*Permanent position*—A position in the classified service which does not have an expiration date.

*Position*—A group of current duties and responsibilities assigned or delegated by competent authority requiring the full-time or part-time employment of one person.

*Probationary employee*—A person serving a probationary period prior to acquiring regular status in a classified service position.

*Probationary period*—A preliminary period of employment the purpose of which is to determine the fitness of an employee for regular status.

*Promotion*—The movement of an employee to another class in a pay range with a higher maximum salary.

*Promotion examination*—An examination for positions in a particular class, admission to which is limited to employees in the classified service.

*Promotion list*—A list of persons who have been found qualified by a promotion examination for appointment to a position in a particular class.

*Provisional employee*—A person selected by an accelerated examination program and serving a 6-month working test period prior to the required probationary period.

*Qualifier*—An employee whose position has been placed in the classified service by proper authority and who will be required to take and pass an examination in order to continue in the position.

*Reallocate*—To reclassify or to change the classification of a position from one class title and code to another class title and code.

*Reassignment*—The movement of an employee from one position to another position in the same class or in a similar class for which the employee qualifies at the same maximum salary.

*Regular employee*—An employee who has been appointed to a position in the classified service under the act after completing the probationary period.

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

*Reinstatement*—The return to the classified service of a former employee who resigned or otherwise left in good standing.

*Removal*—The permanent separation from the classified service of an employee who has been permanently appointed.

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

*Rule of three*—The requirement that the appointing authority is required to choose from among the three highest-ranking available eligibles in filling a particular vacancy and is therefore entitled to have three eligibles from which to choose. This rule does not prohibit an appointing authority from making an appointment if there are fewer than three available eligibles.

*Seasonal employment*—Work that may be a standard workweek for a specified part of the calendar year and may be recurring.

*Seniority*—The amount of time an employee has served in a class or classes in the classified service, calculation and use of which is defined in this part.

*Separation*—The voluntary or involuntary termination of employment, including temporary termination as in suspension or permanent termination as in removal.

*Suspension*—The temporary, involuntary separation of an employee.

*Temporary employee*—A qualified person appointed to a position from an eligible list for a period not to exceed 12 months.

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

*Trainee*—A qualified person appointed or promoted to a class identified as a training level class.

*Training period*—The period of time prescribed for a trainee class, during which the incumbent receives general or specialized training, or both, upon the successful completion of which the trainee is promoted without further examination to the class for which trained.

*Transfer*—The movement of an employee from one appointing authority to a different appointing authority.

*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.

**§ 91.4. Classified service coverage.**

(a) *Coverage.*

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

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

(b) *Exemptions.*

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

exemption request to the Commission, which will make the final determination of classified service coverage.

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

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

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

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

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

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

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

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

**CHAPTER 93. CIVIL SERVICE COMMISSION AND EXECUTIVE DIRECTOR**

**§ 93.1. Meetings of Commission.**

(a) The Commission will meet at least once each month, consistent with the act, at its offices in Harris-

burg, Pennsylvania, or at other places as will best serve the public interest. Meetings may be cancelled with appropriate public notice.

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

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

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

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

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

#### **EXAMINATIONS REQUISITE FOR APPOINTMENT AND PROMOTION**

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

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

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

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

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

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

(1) Except as provided in paragraphs (2) and (3), no questions in the application 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.

##### **§ 95.1a. United States citizenship.**

To the extent permitted by law, when all applicants for appointment or promotion to a position in the classified service are equally qualified, the appointing authority will prefer United States citizens over those who are not.

##### **§ 95.2. Residence requirements.**

(a) *Resident defined.* A resident is a person who resides, and who has manifested the intent to continue to reside in this Commonwealth or a former resident of this Commonwealth who meets the criteria in paragraph (2)(i) or (ii).

(1) Evidence of intent to continue to reside in this Commonwealth includes the following:

(i) Rent, lease or purchase of a property which the applicant has made a primary residence in this Commonwealth.

(ii) Payment of State and local taxes.

(iii) Registration of personal property, such as bank accounts, stocks, and bonds and automobiles within this Commonwealth.

(iv) Possession of a current Pennsylvania driver's license.

(v) Current registration to vote in this Commonwealth.

(2) Former residents of this Commonwealth who relocated out-of-State for academic or employment purposes, shall establish Pennsylvania residency within 6 months of beginning employment in the classified service and shall have done one of the following:

(i) Graduated from a public, private or nonpublic secondary school in this Commonwealth within 5 years of applying for a position in the classified service.

(ii) Attended a public, private or nonpublic school in this Commonwealth at least 80% of the time while enrolled in grades one through twelve and attended the school within 5 years of applying for a position in the classified service.

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

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

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

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

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

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

**§ 95.6. (Reserved).**

**§ 95.7. Promotion procedure.**

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

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

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

(3) By appointment of Commonwealth employees of a given appointing authority or between appointing au-

thorities, who appear on an appropriate employment list and who meet eligibility criteria as established by the Director.

(4) By appointment of probationary or regular employees from the next most appropriate promotion list or employment list, if the official promotion or employment lists have been exhausted.

(5) By appointment of regular employees without formal examination, based upon meritorious service and seniority.

(b) *Promotion examinations.* Examinations shall be as follows:

(1) Except as indicated in this subsection, promotion examinations shall be open to regular or probationary status employees who meet the qualifications and who occupy positions within a lower maximum salary. As determined by the Director, promotion examinations may be limited to employees occupying positions in specified classes.

(2) The Director may, after consultation with the appropriate appointing authorities, establish the length of service required of candidates in the qualifying class or classes for eligibility to participate in promotion examinations.

(3) The Director will have the power to decide whether the promotion examination is to be interdepartmental or intradepartmental.

(c) *Promotion without examination.* Promotion without examination may be accomplished under the following circumstances:

(1) When a trainee in a lower level training title has successfully completed the prescribed period of training, the trainee will be promoted, without further examination, to the higher level title.

(2) When an appointing authority desires to fill a vacant position by promotion without examination, based on meritorious service and seniority, it may follow one of the following alternatives:

(i) *Competitive promotion without examination.* The appointing authority shall post the vacancy, consider the eligible employees who express an interest and make the promotion decision based upon an objective review of each employee's meritorious service and seniority. Seniority for this purpose shall be the length of continuous service of an employee in the designated next lower classes if there has been no break-in-service. Eligibility for consideration for the promotion may be limited by the appointing authority to a particular geographic or program area. The posting shall, whenever possible, specify the classes determined to be next lower. Otherwise, the posting shall state that applications will be reviewed to determine if employees previously held regular status or currently hold regular status in a class for which there is a logical occupational, functional or career development relationship to the posted position or if there is a clear linkage between the required knowledges, skills and abilities of the previously or currently held class with those needed for the posted position.

(ii) *Noncompetitive promotion without examination.* The agency head will insure that the employee meets the experience and training requirements of the higher level position, has regular status, and meets the meritorious service and seniority requirements.

(3) When a classification audit reveals that a position should properly be classified to a higher level, the

incumbent of the position will be promoted without examination to the higher level, if the incumbent possesses the established requirements for the higher classification.

(4) When an unskilled position in the unclassified service exists immediately below a vacancy in a position in the classified service, the incumbent of the unskilled position shall be promoted into the classified service position, if the following occur:

(i) The promotion is into a classified service position immediately above the employee's position.

(ii) The promotion is based on seniority and meritorious service.

(iii) The employee meets all of the established requirements for the higher position.

(iv) The employee satisfactorily completes a 6-month probationary period in the classified service position.

(v) A promotion shall be possible only within agencies provided full classified service coverage and listed in section 3(d) of the act (71 P. S. § 741.3(d)).

(5) When there is a labor agreement covering the positions to which employees are to be promoted, the terms of the agreement as to promotion procedures shall be controlling.

(d) *Eligibility for promotion.* An employee whose last regular or probationary performance evaluation is unsatisfactory or otherwise fails to meet standards, will be disregarded for appointment or promotion from any list and will not be eligible for promotion without examination.

#### NATURE OF EXAMINATIONS

##### § 95.14. Use of class specifications in examinations.

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

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

(1) Freedom from physical or mental defects which would render the employee unfit for competent performance with or without reasonable accommodation.

(2) Good moral character, honesty, sobriety, industry, loyalty and dependability.

(3) Possession of a valid appropriate driver's license, when driving or parking motor vehicles is necessary to carry out work assignments.

(4) Possession of suitable instruments, tools or equipment when they are customarily furnished by the employee in a profession, skilled trade or other occupation.

(5) Residence, sex and similar qualifications imposed by law or rule.

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

#### CONDUCTING EXAMINATIONS AND RATING COMPETITORS

##### § 95.21. Scheduling of examinations.

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

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

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

##### § 95.22. Administration and scoring of examinations.

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

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

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

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

##### § 95.23. Security of competitive standards.

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

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

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

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

(c) *Cheating on examinations or seeking undue advantage.* The Director will disqualify an applicant who impersonates another or has another person impersonate the applicant in connection with an examination, or who uses

or attempts to use unauthorized aids or assistance, including copying or attempting to copy from or helping or attempting to help another applicant in any part of an examination, or who otherwise seeks to attain undue advantage for himself or others in connection with the examination. In addition, the Director will refer these cases to the Commission for determination of possible violations of sections 902 and 903 of the act (71 P. S. §§ 741.902 and 741.903).

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

**PUBLIC NOTICE OF EXAMINATIONS**

**§ 95.32. Special assistance in recruitment.**

The Director will encourage interested appointing authorities and agencies, public and private, to aid in the recruitment of qualified applicants through appropriate means of communication concerning the examinations. When classes are unique to one appointing authority, the primary responsibility for recruitment may rest with that appointing authority.

**§ 95.33. Content and publication of examination announcements.**

(a) The Director or a designee will determine the content and method and scope of publication for each examination announcement. The publication may be electronic. Examination announcements will be published for a minimum of 2 weeks. The scope of publication will be based on the geographic availability of positions and potentially qualified and available applicants and may be regional, Statewide or include both in-State and out-of-State locations.

(b) The content of examination announcements may include the following:

- (1) The general nature of work and pay for the classes for which the examination is being announced.
- (2) Any experience, training or other requirements for the classes for which the examination is being announced.
- (3) Information on whether the examination is being given for appointment or promotion, or both.
- (4) The nature of the examination.
- (5) How to apply.

**RATINGS OF COMPETITORS**

**§ 95.41. Qualifying points on examinations.**

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

(b) *Notice of qualifying points.* When there is a multipart examination, the Director may require applicants to attain a qualifying score or rating on each test or part of test.

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

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

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

**§ 95.42. Preservation of examination records.**

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

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

**§ 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, 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)).

**§ 95.44. Information regarding unsuccessful candidates.**

Except as provided in § 95.43(b) and (c) (relating to inspection of examination records), the examination



records of applicants who failed all or part of an examination, or who voluntarily withdrew from the examination, may not be exhibited; nor may information be divulged concerning their participation in the examination.

#### ESTABLISHMENT OF EMPLOYMENT AND PROMOTION LISTS

##### § 95.51. Eligible lists.

The names of those persons who have been found qualified for and have successfully passed the examination shall be arranged in order of final earned ratings and including applicable veterans' credits.

##### § 95.52. (Reserved).

#### DURATION OF EMPLOYMENT AND PROMOTION LISTS

##### § 95.61. Extension and cancellation of eligible lists.

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

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

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

##### § 95.63. Amendment of an eligible list.

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

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

#### 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 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 work days after the date of certification, unless extended by the Director, and appointive action may be initiated at any time within that period.

##### § 97.4. Effect of appointment from list.

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

#### SELECTION AND APPOINTMENT OF ELIGIBLES

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

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

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

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

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

##### § 97.13. Removal of eligible.

An objection to the eligibility for certification or appointment of an eligible whose name appears on a certification shall be promptly raised by the appointing authority using the process established by the Director as set forth in Management Directive 580.34 (as amended) (relating to removal of eligibles for certification or appointment in the classified service). If the objection is sustained by the Director or Commission, the appointing authority need not consider the eligible for appointment.

#### PROBATIONARY PERIOD

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

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

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

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

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

**§ 97.33. Service in higher level position.**

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

**§ 97.37. Trainee classes.**

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

**§ 97.39. Notice about performance.**

The appointing authority shall notify the employee in writing whether the services of the employee have or have not been satisfactory prior to the expiration of the employee's probationary period. If the employee's performance has been satisfactory, the appointing authority shall confer regular status upon the employee.

**TEMPORARY AND EMERGENCY APPOINTMENTS**

**§ 97.51. Temporary appointment.**

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

**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 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.

**CHAPTER 99. EMPLOYEES IN THE CLASSIFIED SERVICE**

**Subchapter A. TRAINING PROGRAMS**

**§ 99.1. (Reserved).**

**Subchapter B. SERVICE STANDARDS AND RATINGS**

**§ 99.11. Establishment of system.**

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

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

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

**§ 99.13. Reporting of performance evaluations.**

Performance evaluations for probationary status employees shall be completed and provided to the employees prior to the scheduled expiration of the probationary period by the appointing authority. Other performance evaluation reports shall be completed at least once each year, unless a different schedule is approved by the Director, and copies retained in the employee's official personnel file. Upon request by the Director, performance evaluation reports shall promptly be made available for audit.

**Subchapter C. REASSIGNMENTS AND TRANSFERS**

**§ 99.22. Initiation of transfer.**

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

**§ 99.26. (Reserved).**

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

**§ 101.21. Generally.**

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

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

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

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

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

(c) Suspensions, to include suspensions pending internal investigation, may not exceed an aggregate of more than 60 work days in a calendar year.

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

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

#### REMOVAL DURING PROBATIONARY PERIOD

##### § 101.31. Generally.

An appointing authority shall specify, by written notice, the reasons for removal of an employee before the expiration of the probationary period.

##### § 101.32. Rights of promoted employee during probationary period.

The position vacated by an employee serving a probationary period after promotion may not be filled during the period except on a substitute basis, subject to the return of the employee promoted or the successful completion of the probationary term. An employee serving a probationary period which has resulted from a promotion may be removed from the classified service only for just cause.

#### RETIREMENT

##### § 101.41. (Reserved).

#### CHAPTER 105. NOTICE AND HEARINGS

##### NOTICE

##### § 105.1. Written notice required.

(a) Each appointing authority shall give employees written notice of personnel actions affecting them. At the time that the appointing authority notifies an employee of a furlough or a suspension, it shall simultaneously submit a copy of the notice to the Director.

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

##### § 105.3. Statement of reasons.

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

##### HEARINGS

##### § 105.11. General.

Hearings granted to employees demoted under section 706 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) 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.

##### § 105.13. Form of hearing.

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

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

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

##### § 105.14a. Subpoenas.

(a) *Procedure for requesting subpoenas.*

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

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

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

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

(b) *Service.*

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

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

(3) Service of subpoenas for the attendance of witnesses shall be made at least 48 hours prior to hearing, unless the witness agrees to waive the 48-hour requirement. Subpoenas for the production of documents shall be served no later than 5 work days prior to hearing.

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

(c) *Compensation of witnesses.*

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

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

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

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

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

**§ 105.14d. Prehearing conferences.**

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

- (1) Simplification of the issues.
- (2) Stipulations of fact and authenticity of documents.
- (3) Admissibility and relevance of witness testimony.
- (4) Admissibility and relevance of exhibits, which will be identified and exchanged at the conference.
- (5) Subpoenas and all issues related to subpoenas.
- (6) Offers of settlement or proposals for adjustment, if appropriate.
- (7) Other matters that would facilitate the efficiency of the proceeding.

(b) *Prehearing conference memorandum.* No later than 3 work days in advance of the prehearing conference, the parties will submit to the Commission an original memorandum, plus three copies, that contains the following:

- (1) Caption identifying the parties and the appeal by its assigned appeal number.
- (2) Statement of issues to be decided by the Commission. If a party intends to move the Commission to dismiss the appeal, that issue should be noted, but a Motion to Dismiss must be filed separately.
- (3) Statement of stipulations, or facts not in dispute, that includes requested stipulations of fact and any agreements already reached by the parties regarding undisputed facts.
- (4) Witness list with brief description of testimony of each witness listed.
- (5) Exhibit list with brief description of exhibits and a brief explanation of the relevance of each exhibit listed.
- (6) Estimate of time anticipated to complete presentation of evidence to the Commission.
- (7) Requests for subpoenas may be included with the memorandum.

(8) At the hearing, the parties may be limited to those witnesses and exhibits set forth in the memorandum unless one or more of the following apply:

(i) A supplemental memorandum is submitted to the Commission at least 1 business day prior to the hearing.

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

(iii) The parties have conferred and agree to the additional witnesses or exhibits, or both.

(c) *Supplementation.* Subsections (a) and (b) supplement 1 Pa. Code § 35.113 (relating to initiation of conferences).

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

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

**Subchapter B. REPRODUCTION OF RECORDS**

**§ 110.24. Documents which may be furnished without charge.**

(a) Reproductions of applications and attendant papers and records of employees or candidates, excluding test material, may be furnished to appointing authorities to which the names of the employees or eligibles are furnished for classified service personnel actions.

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

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

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

**§ 110.28. Records retention.**

The Director will prepare and maintain a comprehensive records retention schedule. This schedule will identify those records required for retention by the act and satisfy the act regarding open access under reasonable conditions.

- (1) Minutes of Commission meetings shall be permanent.
- (2) Records may be kept either electronically or mechanically.

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**Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS**

**STATE BOARD OF OPTOMETRY  
[49 PA. CODE CH. 23]  
Continuing Education**

The State Board of Optometry (Board) amends §§ 23.82—23.84 and 23.87 to read as set forth in Annex A.

Notice of proposed rulemaking was published at 33 Pa.B. 1118 (March 1, 2003). Publication was followed by a 30-day public comment period during which the Board received one public comment. On April 30, 2003, the Independent Regulatory Review Commission (IRRC) submitted comments. No comments were submitted by the Senate Consumer Protection and Professional Licensure Committee or the House Professional Licensure Committee.

#### *Statutory Authority*

The final-form rulemaking is authorized under section 3(b)(12) of the Optometric Practice and Licensure Act (act) (63 P. S. § 244.3(b)(12)). Section 3(b)(14) of the act authorizes the Board to "promulgate all rules and regulations necessary to carry out the purposes of this act."

#### *Summary of Comments and Responses to Proposed Rulemaking*

##### *IRRC Comments*

IRRC suggested that § 23.83(b) (relating to continuing education subject matter) be revised. IRRC noted that the first sentence of subsection (b) relates to the title of § 23.83 and is appropriately placed, but that the remainder of subsection (b) relates to course approval, course numbers and reevaluation. IRRC suggested that these provisions would be more appropriately placed in § 23.84 (relating to provider and program registration) or § 23.87 (relating to reporting of continuing education credit hours).

Upon review of IRRC's comments and concerns, the Board has determined that § 23.83(b) should be revised. The Board finds that subsection (b) should be moved to § 23.84(i) and has made this change in the final-form rulemaking. The Board has also amended proposed § 23.83(b), now in § 23.84(i), to simplify the requirements and to include continuing education courses in glaucoma. This amendment is necessary to conform the Board's regulations to the act, as amended by the act of December 16, 2002 (P. L. 1950, No. 225). The amendments to the act authorized properly certified optometrists to treat certain types of glaucoma and mandated continuing education in glaucoma for those optometrists. The Board also made changes to § 23.87(3) to reflect the addition of continuing education courses on glaucoma and to require licensees to ensure the credits are properly identified as therapeutic or glaucoma. The Board added language regarding the subject matter of continuing education courses in the area of glaucoma, and indicated that approved subject matter would include courses on the treatment and management of primary open angle glaucoma, exfoliation glaucoma and pigmentary glaucoma. These are the three types of glaucoma optometrists are authorized to treat under section 2 of the act (63 P. S. § 244.2) in the definition of the practice of optometry.

Finally, the Board amended § 23.87(6) to require the licensee to place his name on the certificate of attendance rather than the course location. This amendment was intended to be made in proposed rulemaking but was inadvertently omitted. The Board believes that the location of a course is immaterial. Requiring a licensee to place his name on the certificate of attendance ensures that the Board can verify a licensee's attendance at continuing education.

##### *Public Comments*

The Board received one comment on the proposed rulemaking from the Pennsylvania Optometric Association (POA). In its comment, the POA noted its full

support for the proposed rulemaking. The POA assents to the requirement of a minimum of 30 hours of continuing education, of which 6 hours must concern the prescription and administration of pharmaceutical agents for therapeutic purposes, for biennial license renewal or reactivation.

#### *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will have no fiscal impact on licensees, the Board, the private sector, the general public or on the Commonwealth or its political subdivisions. The final-form rulemaking will create no additional paperwork for the Board or the private sector.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 12, 2003, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 1118, to IRRC and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on January 27, 2004, the final-form rulemaking was approved by the House Professional Licensure Committee. The final-form rulemaking was deemed approved by the Senate Consumer Protection and Professional Licensure Committee on February 11, 2004. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 12, 2004, and approved the final-form rulemaking.

#### *Additional Information*

Individuals who need information about the final-form rulemaking should contact Teresa Lazo-Miller, Counsel, State Board of Optometry, P. O. Box 2649, Harrisburg, PA 17105-2649.

#### *Findings*

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The final-form rulemaking is necessary and appropriate for the administration of the act.
- (4) The amendments to this final rulemaking do not enlarge the original purpose of the proposed rulemaking published at 33 Pa.B. 1118.

#### *Order*

The Board therefore orders that:

- (a) The regulations of the Board, 49 Pa. Code Chapter 23, are amended by amending §§ 23.82—23.84 and 23.87 to read as set forth in Annex A.

*(Editor's Note: The amendment to § 23.84 was not included in the proposal published at 33 Pa.B. 1118.)*

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order and final-form regulations take effect upon publication in the *Pennsylvania Bulletin*.

STEVEN J. RETO, O.D.,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 1297 (February 28, 2004).)*

**Fiscal Note:** Fiscal Note 16A-529 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 23. STATE BOARD OF OPTOMETRY CONTINUING EDUCATION**

**§ 23.82. Continuing education hour requirements.**

(a) An applicant for biennial license renewal or reactivation of license is required to complete, during the 2 years preceding renewal or reactivation, a minimum of 30 hours of continuing education. For licensees certified in accordance with section 4.1 of the act (63 P. S. § 244.4a), at least 6 of the required 30 hours shall concern the prescription and administration of pharmaceutical agents for therapeutic purposes. Completion of a Board-approved course described in section 4.1(a)(2) of the act shall satisfy the continuing education requirement for the biennial renewal period in which it is completed.

(b) Persons failing to meet the continuing education requirements for any biennial renewal period will be disciplined in accordance with section 7(e) of the act (63 P. S. § 244.7(e)).

(c) The Board may waive the requirements of continuing education in cases of certified illness or undue hardship. It is the duty of each licensee seeking waiver to notify the Board in writing and request the waiver prior to the end of the biennial renewal period for which the waiver is sought. The waiver will be granted, denied or granted in part.

**§ 23.83. Continuing education subject matter.**

(a) Acceptable courses of study are limited to those pertaining to the use of means or methods for examination, diagnosis and treatment of conditions of the human visual system and may include examination for and adapting and fitting of all types of lenses. The Board will not accept courses of study which do not relate to the actual practice of optometry such as studies in office management and financial procedures.

(b) Courses that will meet the requirements for certification in the prescription and administration of pharmaceutical agents for therapeutic purposes in accordance with section 4.1 of the act (63 P. S. § 244.4a) shall concern the treatment and management of ocular or oculo-systemic disease.

(c) Courses that will meet the requirements for certification to treat glaucoma in accordance with section 4.2 of the act (63 P. S. § 244.4b) shall concern the treatment and management of primary open angle glaucoma, exfoliation glaucoma and pigmentary glaucoma.

**§ 23.84. Provider and program registration.**

(a) An agency, organization, institution, association or center seeking to offer an organized program for continuing education may apply to the Board as a provider.

(b) Providers seeking Board approval of continuing education programs shall complete and submit an application as a provider of continuing education.

(c) An application for program approval shall include, but not be limited to, the following information:

- (1) Full name and address of the eligible provider.
- (2) Title of the program.
- (3) Dates and location of the program.
- (4) Faculty names, titles, affiliations, degrees.
- (5) Schedule of program—title of subject, lecturer, time allocated and the like.
- (6) Total number of credit hours requested.
- (7) Method of certifying and assuring attendance.
- (8) Provider number where applicable.
- (9) Provider category.
- (10) Objectives.
- (11) Admission requirements.
- (12) Core subjects.
- (13) Program coordinator.
- (14) Instruction and evaluation methods.

(d) Statements made in the application shall be sworn to be true and correct to the best of the provider's information, knowledge and belief.

(e) Upon approval of a qualified provider, a provider number will be assigned; and upon approval of any program, a program number will be assigned except for those providers listed in § 23.81(a) (relating to coverage).

(f) Programs will be approved only in demonstrated areas of expertise. A change in the area of expertise shall be recorded and communicated to the Board within 60 days of that change. The Board will accept a designation that the particular provider is qualified to provide continuing education in all subject matter as set forth in § 23.83 (relating to continuing education subject matter) so long as expertise can be shown.

(g) Disapproval of program will include a statement setting forth reasons. Applicants may submit new applications within 10 days after receipt of disapproval. New applications shall document alterations in program to meet Board requirements. Notification will occur as soon as possible within the Board's capability on action taken on new applications.

(h) Each approved provider shall request reregistration each biennium, and each application for reregistration shall be accompanied by a statement outlining any major changes in the information previously submitted.

(i) Programs approved to grant continuing education hours in therapeutics or glaucoma shall indicate the number of credits approved in each area on the certificate of attendance. Preapproved providers shall also indicate

on the certificate of attendance how many credits will apply toward the requirement for renewal of therapeutic or glaucoma certification.

**§ 23.87. Reporting of continuing education credit hours.**

Applicants for a license or license renewal shall provide, at a time prescribed and on forms approved by the Board, a signed statement certifying that they have met the continuing education requirements set forth in section 5(b) of the act (63 P. S. § 244.5(b)) by providing information which shall include the following:

- (1) Dates attended.
- (2) Continuing education hours claimed.
- (3) Title of course, including the course number assigned by the Board, if applicable, and description of content. For those courses which are approved to meet the requirements for therapeutic or glaucoma certification, the licensee claiming credit shall ensure that the certificate of attendance includes the course number and number of hours that apply toward the requirement for therapeutic or glaucoma certification.
- (4) School, clinical hospital, medical center, optometric center or organization sponsoring course, clinical conference, clinical rounds or preceptor training.
- (5) Instructor.
- (6) Name of licensee.

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