

# PROPOSED RULEMAKING

## STATE CIVIL SERVICE COMMISSION

[ 4 PA. CODE CHS. 91, 95, 97, 98, 99, 103, 105 AND 110 ]

### Implementation of Acts 69 and 167 of 2016

The State Civil Service Commission (Commission), under the authority of 208 of the Civil Service Act (act) (71 P.S. § 741.208), proposes to add Chapter 98 (relating to appointment and promotion of employees in the classified service by recruiting applicants to apply for a specific vacancy-based examination announcement) and amend Chapters 91, 95, 97, 99, 103, 105 and 110 to read as set forth in Annex A

#### A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

#### B. *Contact Person*

For further information on this proposed rulemaking, contact Karen Denise Wood, Esq., whose contact information appears in the Public Comments section of this preamble.

#### C. *Statutory Authority*

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

#### D. *Purpose and Background*

The act was amended by the act of July 7, 2016 (P.L. 465, No. 69) (Act 69) and the act of November 21, 2016 (P.L. 1314, No. 167) (Act 167). This proposed rulemaking brings the Commission's regulations into conformity with Acts 69 and 167. Other proposed amendments update older hearing regulations to reflect current practices and procedures.

#### E. *Summary of Proposal*

This proposed rulemaking brings the Commission's regulations into conformity with Acts 69 and 167. Specifically, §§ 91.3, 95.47, 97.3, 97.11 and 97.12 are proposed to be amended and Chapter 98 is proposed to be added to comply with Act 69. In addition, §§ 95.1 and 95.20 (relating to application requirements; and authority) are proposed to be amended to comply with Act 167.

Sections 95.71, 97.31, 97.38, 97.63, 99.24, 103.11, 103.23, 105.11 and 110.2 are proposed to be amended to clarify or bring them into conformity with intervening Commonwealth Court decisions and current Commission practices, or both. These proposed amendments are intended to bring Commission regulations governing civil service hearing procedures into conformity with current hearing practices. Some proposed amendments are further intended simply to clarify existing regulations without making substantive amendments.

#### F. *Paperwork Requirements*

The proposed rulemaking does not add to existing paperwork requirements. Many of the proposed amendments could reduce current paperwork requirements.

#### G. *Fiscal Impact*

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its appointing authorities and employees.

#### H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 21, 2017, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Labor and Industry Committee and the Senate State Government Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Commission, the General Assembly and the Governor.

#### I. *Public Comments and Public Hearings*

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

April 25, 2017, at 1 p.m.	Western Regional Office 1503 State Office Building 300 Liberty Avenue Pittsburgh, PA 15222-1210
May 12, 2017 at 10 a.m.	Eastern Regional Office 10 South 11th Street 2nd Floor Philadelphia, PA 19107-3618
May 17, 2017, at 1 p.m.	Commission's Main Office Strawberry Square Complex 4th Floor, Bowman Worth Building 320 Market Street Harrisburg, PA 17108-0569

Individuals desiring to present their views on the proposed rulemaking or receive a copy shall notify Karen Denise Wood, Esq., Assistant Counsel, State Civil Service Commission, 4th Floor, Bowman Worth Building, P.O. Box 569, Harrisburg, PA 17108-0569, (717) 783-1444, fax (717) 772-5120, ra-cs-legalsvcsQandA@pa.gov. Notification of intent to speak at a public hearing shall be made not later than 4:30 p.m. at least 2 working days prior to the scheduled hearing date. Speakers will be required to identify themselves and the organizations they represent, if any. Persons with a disability who wish to attend a public hearing and who may require an auxiliary aid or other service to participate should also contact Karen Denise Wood, Esq. to discuss possible accommodation of needs.

JEFFREY T. WALLACE,  
*Executive Director*

**Fiscal Note:** 61-6. No fiscal impact. However: The proposed regulations do not implement section 212(D) in the Act 167 of 2016. This results in a cost of \$2 million to \$3 million for modernization of the Commission's Information Technology System to the Commonwealth. The proposed regulations do not implement section 502 in the Act of 167 of 2016, which would result in an estimated cost savings to the Commonwealth of \$55,800—\$105,800, if implemented.

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART IV. CIVIL SERVICE COMMISSION**

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

**CHAPTER 91. GENERAL PROVISIONS**

**§ 91.3. Definitions.**

Words, terms and phrases, when used in this part, have the meaning in section 3 of the act (71 P.S. § 741.3), unless the context clearly indicates otherwise. In addition, the following terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Civil Service Act (71 P.S. §§ 741.1—741.1005).

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

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

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

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

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

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

**§ 95.1. Application requirements.**

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

penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities)[ , ] verifying the truthfulness of all responses contained thereon.

\* \* \* \* \*

**CONDUCTING EXAMINATIONS AND RATING COMPETITORS**

**§ 95.20. Authority.**

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

**RATINGS OF COMPETITORS**

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

\* \* \* \* \*

(c) *By private individuals other than the candidate.* The Director 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)) ] be reasonably likely to result in a substantial and demonstrable risk of physical harm to or personal security of an individual, access to the information will be denied.

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

Final earned ratings shall be calculated to whole numbers or categories represented by whole numbers. Ties in final earned ratings [ shall ] may not be broken. All available eligibles with the same final earned rating shall be certified in accordance with the rule of three or any alternative rule properly designated by the Director. This section provides for issuance of a complete certification of eligibles, as determined by the number of vacancies, which includes all eligibles with the same final earned rating, as well as to group for consideration those eligibles determined by the examination process to be approximately equally qualified.

**RATINGS OF COMPETITORS**

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

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

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

**CERTIFICATION**

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

\* \* \* \* \*

(b) *Duration of certification.* A certification of names for appointment or for canvass and appointment shall be valid for [ 60 ] 90 work days after the date of certification, unless extended by the Director, and appointive action may be initiated at any time within that period.

**SELECTION AND APPOINTMENT OF ELIGIBLES**

**§ 97.11. Appointment process.**

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

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

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

(2) The request shall be submitted to the Director in writing prior to the date on which the Commission begins testing after announcing that a new examination will be offered for the classification or classification series which is subject to the request. If a request is not made for an alternative rule, the rule of three applies and shall be used for at least 12 months before a request for an alternative rule can be initiated.

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

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

(5) In cases in which an examination program is open on a continuous basis, the request for a change to an alternative rule can be initiated at any time. Appointments using the new rule cannot be made before written permission is obtained from the Director. An appointing authority shall continue to use the same alternative rule to make all appointments and promotions in the specified classification or classification series for at least 12 months before a new alternative rule request for the same classification can be initiated.

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

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

\* \* \* \* \*

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

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

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

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

**PROBATIONARY PERIOD**

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

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(c) An employee who exceeds the maximum 18-month probationary period[ , shall have regular status on the day after the probationary period ends ] for a position, or the maximum 24-month probationary period if in a trainee class position, without being awarded regular status can request a hearing by filing an appeal with the Commission under section 951(b) of the act (71 P.S. § 741.951(b)).

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

**§ 97.38. Probation following promotion.**

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

(1) During the probationary period, the position vacated by the employee will not be filled except on a substitute basis.

(2) During the first 3 months of the probationary period, the employee has the option to return to the **regular status** position previously held.

(3) At any time after the first 3 months of the probationary period, the employee may return to the previous **regular status** position or classification with written consent of the appointing authorities.

(4) If the services of the employee are found unsatisfactory by the appointing authority, the employee shall be restored to the previous **regular status** position or classification.

(5) **A promoted employee who has never held regular status in the classified service does not have a right to return to a probationary status position previously held.**

**CLASSIFICATION STANDARDS**

**§ 97.63. Working out-of-class.**

An appointing authority may temporarily assign an employee to perform duties and responsibilities of another class. Except in the case of emergency, which shall be limited to [ 30 ] **no more than 60** work days, the employee so assigned shall meet all of the established requirements for the class to which assigned. Employees assigned to work out-of-class shall either have probationary or regular status in their current class. An out-of-class assignment does not entitle the incumbent to preferences for the position on a permanent basis.

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

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

- Sec. 98.1. Vacancy-based eligible lists.
- 98.2. Requesting a vacancy-based examination announcement.

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

When an appointing authority receives permission from the Director to fill a vacant position under section 602(a)(2) of the act (71 P.S. § 741.602(a)(2)), the eligible list for that vacancy shall be created using only the names of those qualified candidates who applied for the vacant position after notice of the vacancy is announced by the Commission.

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

(a) *Permission of the Director.* An appointing authority electing to fill a vacant position under section 602(a)(2) of the act (71 P.S. § 741.602(a)(2)) shall prepare a request for the vacant position and submit it to the Director for approval. If the Director approves the request, the Director will provide notice of the vacancy to prospective applicants by using technology approved by the Commission.

(b) *Creation of an eligible list.*

(1) After the expiration of the time period when qualified applicants shall have completed the applicable civil service examination to be eligible for selection, the Director will certify the names of as many eligibles as necessary to satisfy the employment requirements of the

appointing authority. Each certification will indicate the relative ranks of the applicants and the last known contact information for each eligible on the list, and, if applicable, veteran's preference status, age preference status or similar status with regard to any other preference provided by law.

(2) The process for selecting a candidate to fill the vacancy will then follow the procedures in §§ 97.11—97.16 (relating to selection and appointment of eligibles).

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

**Subchapter C. REASSIGNMENTS AND TRANSFERS**

**§ 99.24. Effect of transfer on probationary period.**

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

**CHAPTER 103. PROHIBITIONS, PENALTIES AND ENFORCEMENT**

**POLITICAL ACTIVITY, ASSESSMENTS AND DISCRIMINATION**

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

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

(b) The provisions of the act which expressly prohibit certain political activities do not apply to the classified service [ **employee** ] **employee** who has been furloughed or who is on a regular **unpaid** leave of absence, [ **or** ] **a** leave of absence to take a noncivil service position **or a leave of absence subject to 71 Pa.C.S. § 5302(b) (relating to credited State service) to serve as an elected full-time officer for a Statewide employee collective bargaining organization.** An [ **employee** ] **employee** on another type of **paid** leave of absence shall continue to comply with the political activity restrictions while on leave. Upon return to the classified service the [ **employee** ] **employee** shall immediately cease the political activities prohibited by the act. An [ **employee** ] **employee** elected to public office while on leave, who returns to the classified service, may serve out the remaining portion of the present term of office if the duties of the office are not among those prohibited by the act. The [ **employee** ] **employee** may not run for or be nominated for a new term of office.

**REMOVAL AND DISQUALIFICATION OF OFFICERS AND [ EMPLOYEES ] EMPLOYEES**

**§ 103.23. Penalty for violation.**

If after due inquiry, an [ **employee** ] **employee** has been found to have violated the act or this [ **subsection** ]

section and has been penalized by removal [ for 1 year ] from the classified service for a period of time determined by the Commission as set forth in section 906 of the act (71 P.S. § 741.906), the [ employe ] employee may not [ reenter ] re-enter the classified service except through appointment from an employment list.

**CHAPTER 105. NOTICE AND HEARINGS  
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. ] Hearings scheduled by the Commission under its authority to conduct hearings as provided in section 951 of the act (71 P.S. § 741.951) are public hearings. At least 10 working days notice in advance of the date of the hearing [ shall ] will 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 ] will 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.

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

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

**Subchapter A. DOCUMENTARY FILINGS**

**§ 110.2. Exhibits.**

(a) Parties presenting exhibits shall bring [ six ] two copies to the hearing.

(b) Subsection (a) supersedes 1 Pa. Code § 33.15 (relating to number of copies).

[Pa.B. Doc. No. 17-671. Filed for public inspection April 21, 2017, 9:00 a.m.]