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## Part II

This part contains the  
Rules and Regulations





# RULES AND REGULATIONS

## Title 4—ADMINISTRATION

### OFFICE OF ADMINISTRATION

#### [ 4 PA. CODE CH. 601—607 ]

#### Civil Service Reform

The Office of Administration hereby adopts temporary regulations by adding to Title 4 of the Pennsylvania Administrative Code, Part XV (relating to Office of Administration) and Subpart A (relating to Temporary Regulations—Civil Service Reform) to read as set forth in Annex A.

#### *Effective Date*

These temporary regulations will be effective on March 28, 2019.

#### *Statutory Authority*

Effective March 28, 2019, the act of June 28, 2018 (P.L. 460, No. 71) (Act 71) repeals the Civil Service Act of 1941, act of August 5, 1941 (P.L. 752, No. 286), as amended, (71 P.S. §§ 741.1—741.1005) (Civil Service Act), and provides for civil service reform in the areas of merit-based hiring, including civil service applications, examinations, certifications and promotions. Effective June 28, 2018, Act 71 authorized the Office of Administration to promulgate temporary regulations to implement Office of Administration duties as set forth in Act 71. The adoption of temporary regulations is not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205), known as the Commonwealth Documents Law; section 204(b) of the Commonwealth Attorneys Act, act of October 15, 1980 (P.L. 950, No. 164) (71 P.S. § 732-204(b)); or the requirements of the Regulatory Review Act, act of June 25, 1982 (P.L. 633, No. 181) (71 P.S. §§ 745.1—745.15). See 71 Pa.C.S. § 2203(b) (relating to regulations). The temporary regulations will expire 3 years following the publication of these temporary regulations.

#### *Background and Need for the Temporary Regulations*

Act 71 transfers certain duties from the State Civil Service Commission (Commission) and the Director of the Commission to the Office of Administration. See 71 Pa.C.S. § 2201 (relating to transfer of duties). The Office of Administration is responsible for administering Act 71, except for Chapters 30 and 31 (relating to State Civil Service Commission and Director; and hearings and records). See 71 Pa.C.S. § 2202(a)(6) (relating to duties of Office of Administration). Under section 4 of Act 71, which pertains to effective dates, the Office of Administration must implement the transfer of duties beginning March 28, 2019. There is insufficient time to propose and publish final regulations prior to March 28, 2019. Accordingly, the Office of Administration elects to promulgate temporary regulations.

Under section 3 of Act 71, except for the added authority to promulgate temporary regulations; the transfer of the administration of merit system employment to the Office of Administration; the addition of Chapters 32 and 33 (relating to commission funds, costs and service; and records, status and appropriations); the transfer of records to the Office of Administration; and the addition of three terms to the definition section, the amendments in Act 71 are made to conform to the style of the *Pennsylvania Consolidated Statutes* and are not intended

to change or affect the legislative intent, judicial construction or administration and implementation of the Civil Service Act. Where practicable, and in the interest of continuity for appointing authorities and others, the Office of Administration followed the general format of the applicable Rules of The Civil Service Commission and incorporated the content of the corresponding Commission regulations into the temporary regulations. Notably, because the Commission did not promulgate regulations implementing the Act of July 7, 2016 (P.L. 465, No. 69) (Act 69) or the Act of November 21, 2016 (P.L. 1314, No. 167) (Act 167), and the content of those amendments were carried over into Act 71, the temporary regulations differ and/or include additional provisions implementing those amendments. The Office of Administration did not incorporate, in its temporary regulations, Commission regulations that merely restate provisions within Act 71, that are not applicable to the Office of Administration, or that are inconsistent with the Office of Administration's policies. Additionally, throughout the temporary regulations, when the Office of Administration incorporated the content of the Commission's regulations into the temporary regulations, the Office of Administration made revisions for clarity.

#### *Description of the Temporary Regulations*

Under section 3 of Act 71, 71 Pa.C.S. Part III (relating to civil service reform) is a continuation of the Civil Service Act, and except where indicated otherwise in Act 71, all activities initiated under the Civil Service Act continue and remain in full force and effect and may be completed under Act 71. Section 3 of Act 71 further provides that "contracts, obligations and collective bargaining agreements entered into under the Civil Service Act are not affected nor impaired by the repeal of the Civil Service Act." Given this clear statutory language, the Office of Administration determined it was unnecessary to address within each regulatory provision in the annex, the statutory transfer of duties or the continuation of activities performed under the Civil Service Act.

## GENERAL PROVISIONS

#### *Short Title*

Section 601.1 (relating to short title) sets forth the short title as "Merit System Employment Regulations." The Office of Administration selects this short title because it sufficiently describes the Office of Administration's duties in administering civil service employment within the Commonwealth and will not be confused with The Rules of The Civil Service Commission.

#### *Purpose*

Section 601.2 (relating to purpose) sets forth the purpose of the temporary regulations, which is to implement civil service reform as required by Act 71. The purpose of civil service reform, as reflected in Act 71, is "to create and sustain a modern merit system of employment within the Commonwealth work force that promotes the hiring, retention and promotion of highly qualified individuals, ensuring that government services are efficiently and effectively delivered to the public." See 71 Pa.C.S. § 2102 (relating to purpose). Under section 601.2(b), these temporary regulations implement and supplement the act and must be read together with the applicable provisions of the act.

### Definitions

Section 601.3 (relating to definitions) sets forth definitions for terms used in the temporary regulations. The Office of Administration incorporated, in its temporary regulations, applicable definitions from The Rules of The Civil Service Commission but made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 91.3 (relating to definitions). The Office of Administration did not adopt, in its temporary regulations, terms specifically defined in Act 71, but rather, incorporated those terms by reference. Additionally, by incorporating the Commission's definitions into these temporary regulations, the Office of Administration made minor revisions for clarity. The Office of Administration also includes in its temporary regulations the following definitions: alternate rule, disability, eligible veteran, job specification, preferred reemployment list, reclassification, Senior Management Service and Special Advisor for Veterans' Programs.

A definition of "alternate rule" is necessary to distinguish between the rule of three and the ability of an appointing authority to select an alternate number other than three of the highest-ranking available individuals as permitted under 71 Pa.C.S. §§ 2401(b)(1)(iii) and 2402(b)(2) (relating to certification; and selection and appointment of eligibles). The Office of Administration defines the alternate rule as "a rule that gives appointing authorities the ability to select from all eligibles on an eligibility list or a specific alternative number of eligibles, other than three, but not less than three."

These temporary regulations include a definition of "disability" because that term is used in section 601.6 (relating to reasonable accommodations), which establishes procedures for requesting reasonable accommodations in the application and examination process. These temporary regulations define "disability" as follows: "as defined by the Americans with Disabilities Act of 1990, as amended (42 U.S.C.A. §§ 12101—12213) (ADA), a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment."

These temporary regulations distinguish between veteran, as defined in Act 71, as compared to veterans that are eligible for veterans' preference under 51 Pa.C.S. Chapter 71 (relating to veterans' preference). In doing so, the Office of Administration defined eligible veteran as an individual, excluding spouses, who is eligible to receive an employment preference under 51 Pa.C.S. Chapter 71.

Under Act 71, the terms "job," "job title," "class" and "class of positions" are defined as a "group of positions in the classified service which are sufficiently similar in respect to the duties and responsibilities of the positions that the same: (1) descriptive title may be used for each position; (2) requirements as to experience, knowledge and ability are demanded of incumbents; (3) assessments may be used to choose qualified appointees; and (4) schedule of compensation may be made to apply with fairness under like working conditions." See 71 Pa.C.S. § 2102. For consistency and clarity, and where appropriate, the Office of Administration chooses to use the term "job" throughout the regulations instead of interchangeably using "job" and "class." Consistent with the use of the term "job," these temporary regulations use the term "job specification" and define it as a "written description of a job which defines and describes representative duties and responsibilities and sets forth the experience and

training that provides the knowledge, skills and abilities essential to the performance of the work of the job."

Although the Commission's regulations use the term "preferred reemployment list," the term is not defined in the regulations, but rather in Management Directive 580.30, Amended (Civil Service Leave of Absence and Return Rights). The Office of Administration adopted the definition from the management directive and defines "preferred reemployment list" as a "list of persons who had regular or probationary status and could not be returned from a civil service leave of absence due to the lack of a vacant position."

These temporary regulations define the term "reclassification." In defining reclassification, the Office of Administration adopted the Commission's definition of the term "reallocate," except that the Office of Administration uses the term "job" instead of class title within the definition. The Commission's regulations appear to use the terms "reclassify" and "reallocate" interchangeably; however, when referring to a change in a classification of a position from one job and code to another job and code, these temporary regulations use only the term "reclassification."

Although the Commission's regulations use the term "Senior Management Service," the term is not defined in the regulations, but rather in Management Directive 580.30, Amended (Civil Service Leave of Absence and Return Rights). The Office of Administration adopted the definition from the management directive and defines "Senior Management Service" as "[p]ositions in the commonwealth unclassified service that have broad policy participation and management responsibility."

These temporary regulations include a definition of "Special Advisor for Veterans' Programs" to provide a frame of reference for the section of these temporary regulations that sets forth the duties and responsibilities of the Special Advisor. The Office of Administration defines the "Special Advisor for Veterans' Programs" as the "individual appointed by the Secretary of Administration under 71 Pa.C.S. § 2202(a)(12) (relating to duties of Office of Administration)."

### Veterans' Preference

Section 601.4 (relating to veterans' preference) covers veterans' preference requirements for civil service employment. Under section 2201(a)(5) of Act 71, the Office of Administration is required to advertise that: "(i) veterans' preference is the law of this Commonwealth; (ii) to determine standing on each certified eligibility list, an additional 10 points shall be applied to the final examination score obtained by a veteran, in accordance with 51 Pa.C.S. § 7103 (relating to additional points in grading civil service examinations); and (iii) the same preferential rating given to veterans... shall be extended to include spouses of deceased or disabled veterans, in accordance with 51 Pa.C.S. § 7108 (relating to preference of spouses)."

The Office of Administration proposes this temporary regulation to ensure adherence to the legal requirements relating to veterans' preference. Notably, the Office of Administration does not incorporate the requirement in 51 Pa.C.S. § 7104(b) (relating to preference in appointment or promotion) which gives preference to veterans, in the context of veterans seeking promotion, as the Supreme Court of Pennsylvania held that provision unconstitutional. *Hoffman v. Township of Whitehall*, 677 A.2d 1200 (Pa. 1996).

*Age Preference*

Section 601.5 (relating to age preference) pertains to the statutory age preference requirement for the Department of Aging. See 71 P.S. § 581-3(b). While the Commission recognizes age preference in a management directive, the Office of Administration determined that it is more appropriate to include such requirements within its regulations. See Management Directive 580.21, Amended (Veterans' Preference on Classified Service Employment Certifications). These temporary regulations clarify that notwithstanding individuals qualifying for veterans' preference under 51 Pa.C.S. Chapter 71, individuals qualifying for age preference may be selected.

*Reasonable Accommodations*

Section 601.6 pertains to reasonable accommodations for individuals with disabilities seeking civil service appointments or promotions. The Commission's regulations do not have a corresponding provision. The Office of Administration includes this provision in its temporary regulations to ensure that individuals with disabilities understand how to request accommodations and to ensure compliance with Federal and State laws, including the ADA.

*Service to Departments, Boards and Commissions, Agencies and Political Subdivisions; Cooperation with Other Civil Service Agencies.*

Section 601.7 (relating to service to departments, boards and commissions, agencies and political subdivisions; cooperation with other civil service agencies) pertains to service to departments, boards, commissions, agencies and political subdivisions; and cooperation with other civil service agencies. This section implements 71 Pa.C.S. § 2901 (relating to service and cooperation). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission regarding acquisition of services and personnel actions by political subdivisions and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 93.8 (relating to service to departments, boards and commissions, agencies and political subdivisions; cooperation with other civil service agencies). The Office of Administration did not incorporate into its temporary regulations the Commission's regulation requiring maintenance of a list of classes of positions in the classified service and of classes of positions to which the services have been extended because this information will be accessible electronically on the Office of Administration's web site. See 4 Pa. Code § 93.8(a)(5). Additionally, the Office of Administration did not include in its temporary regulations the Commission's regulation that incorporates the act and regulations into contracts for services because this requirement is more appropriately addressed within those contracts. See 4 Pa. Code § 93.8(a)(6).

Regarding reimbursement for services, the Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission but modified reimbursement requirements for examinations delivered at test centers. See 4 Pa. Code § 93.8(b). Under these temporary regulations, an appointing authority will reimburse the Office of Administration on a semi-annual basis for the actual cost of preparing, administering and rating examinations delivered at test centers. Act 69 and Act 167 modernized the civil service hiring process, which resulted in a decrease in the use of test center examinations by appointing

authorities and an increase in the use of evaluations of experience and education. Under Act 71, the Office of Administration anticipates a continued decrease in the use of test center examinations. Because some agencies may choose not to use test center examinations or may significantly decrease the use of test center examinations, correlating the costs of the test center examination services to the actual service used by an appointing authority is a more equitable approach to reimbursement. Additionally, in incorporating the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Electronic records and signatures*

Section 601.8 (relating to electronic records and signatures) pertains to electronic records and signatures. This provision allows for the use and acceptance of electronic records, including electronic signatures, provided that such records and signatures conform to the Uniform Electronic Transactions Act (73 P.S. §§ 2260.303—2260.312), and other laws governing electronic records and signatures.

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

*Examinations Requisite for Appointment and Promotion Application Requirements*

Section 602.1 (relating to application requirements) pertains to application requirements for the selection of employees for entrance to, or promotion in, the classified service and implements 71 Pa.C.S. § 2301 (relating to examinations requisite for appointment and promotion). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.1 (relating to application requirements). In § 602.1(a)(1) and (3), the Office of Administration included provisions to reflect the usage of electronic applications and the implementation of vacancy-based hiring and postings. The Office of Administration clarified in § 602.1(b)(3) that the job specification is the primary basis and source of authority for the evaluation of the minimum qualifications of applicants for examinations. Section 602.1(b)(3) correlates to the Commission regulation at 4 Pa. Code § 95.14(a) (relating to use of class specifications in examinations); however, the Office of Administration believes this subject matter is more appropriately addressed under application requirements. Additionally, under § 602.1(c), the Office of Administration included sexual orientation, gender identity or expression, and AIDS or HIV status to the list of prohibited application questions.

In § 602.1(d), the Office of Administration incorporated in its temporary regulations the Commission regulation set forth at 4 Pa. Code § 95.1(d), but did not adopt provisions relating to applicants addicted to the use of narcotics or intoxicating beverages or with physical or mental disabilities. While the Office of Administration has the authority to specify "qualifications as permitted by law" in its regulations and in the announcements of examinations, the Office of Administration does not believe a general inquiry into addictions or physical and mental disabilities is appropriate in the application or examination process. See 71 Pa.C.S. § 2301(c). The Office of Administration includes in its temporary regulations a provision allowing for rejection of applicants and disqualification of eligibles for failure to meet Federal or State

law or regulations. Additionally, similar to the Commission regulation at 4 Pa. Code § 95.14, these temporary regulations allow for consideration of lack of professionalism, honesty, trustworthiness and dependability. In § 602.1(e), the Office of Administration includes a provision allowing the acceptance of applications filed after the announced final filing date if the Office of Administration determines extraordinary circumstances exist. In § 602.1(f), the Office of Administration did not include the Commission regulation addressing the conditional admittance and notice of acceptance of an application as those provisions are more appropriately addressed in a policy manual. See 4 Pa. Code § 95.1(f). Also, in incorporating the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

#### *Residence Requirements*

Section 602.2 (relating to residence requirements) pertains to residency requirements for the selection of employees for entrance to, or promotion in, the classified service and implements 71 Pa.C.S. § 2301(b). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission but made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.2 (relating to residence requirements). Additionally, under § 602.2(a)(2), the Office of Administration clarified the statutory requirements for former residents. Also, in incorporating the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

#### *Selective Certifications*

Section 602.3 (relating to selective certifications) pertains to selective certification for the selection of employees for entrance to, or promotion in, the classified service. The Office of Administration did not adopt the corresponding Commission regulation at 4 Pa. Code § 95.5a (relating to special requirements) because it does not reflect the Act 69 amendment, which was also included in Act 71, requiring consideration of merit-related factors. See 71 Pa.C.S. § 2401(d). Under § 602.3(b), the Office of Administration clarified that appointing authorities must submit written requests to impose special requirements. The Office of Administration did not include specific provisions setting forth criteria necessary for selective certifications because Act 71 specifically addresses those requirements. See 71 Pa.C.S. § 2401(d).

#### *Promotion Procedure*

Section 602.4 (relating to promotion procedure) pertains to promotion procedures in the classified service and implements 71 Pa.C.S. § 2301(a) and (d). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.7 (relating to promotion procedure). The Office of Administration did not adopt the Commission regulation at 4 Pa. Code § 95.7(c)(4)(v) because limiting promotions of individuals in unskilled positions to agencies listed in the definition of classified service is inconsistent with Act 71. See 71 Pa.C.S. § 2301(a)(1). Section 2301(a) of Act 71 does not limit promotion of individuals in unskilled positions to the classified positions set forth in the definition of classified service, but rather, provides for promotion into any classified position immediately above

the individuals' own position. Because the definition of classified service does not contain an all-inclusive list of agencies covered by Act 71, it is not appropriate to limit promotions to the agencies listed therein. These temporary regulations also clarify that competitive and noncompetitive promotion without examination is subject to Office of Administration approval and that appointing authorities must provide justification for using a noncompetitive promotion without examination. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

#### *Nature of Examinations*

##### *Frequency of Examinations*

Section 602.5 (relating to frequency of examinations) pertains to the frequency of examinations and implements 71 Pa.C.S. §§ 2302 and 2303 (relating to nature of examinations; and holding examination and rating competitors). The Office of Administration incorporated in its temporary regulations the corresponding provision of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.11(a) (relating to frequency of examinations). The Office of Administration did not adopt the Commission regulation at 4 Pa. Code § 95.11(b) because this provision is redundant to section 95.11(a) and does not reflect changes in the administration of civil service examinations that occurred as a result of Act 69 and Act 167, which were subsequently incorporated into Act 71, that modernized the civil service hiring process. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

##### *Cooperation Regarding Examinations*

Section 602.6 (relating to cooperation regarding examinations) pertains to cooperation regarding examinations and implements 71 Pa.C.S. §§ 2302 and 2303. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission but made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.12(a)—(c) (relating to cooperation regarding examinations). The Office of Administration did not adopt provisions in section 95.12(a) of the Commission's regulations that were redundant to other regulatory or statutory provisions or unnecessary given appointing authorities' ability to select the method of examination. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

##### *Tests in Examinations*

Section 602.7 (relating to tests in examinations) pertains to tests in examinations and implements 71 Pa.C.S. §§ 2301(d), 2302 and § 2305 (relating to ratings of competitors). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.13 (relating to tests in examinations). In adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Use of Position Description in Examinations.*

Section 602.8 (relating to use of position descriptions in examinations) pertains to use of position descriptions in examinations for the selection of employees for entrance to, or promotion in, the classified service, and implements 71 Pa.C.S. §§ 2301(c) and 2302. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.14. In incorporating the Commission regulation relating to the basis for examination, the Office of Administration changed the primary basis from the classification standards for a job to position descriptions. Under Act 71, examinations must be practical in nature, relate to the duties and responsibilities of the position for which the applicant is being examined, and must fairly test the relative capacity and fitness of individuals examined to perform the duties of the position or class of positions to which the individuals seek to be appointed or promoted. See 71 Pa.C.S. § 2302(b). Consistent with Act 71, the Office of Administration chooses to focus the basis of the examination on the position description and duties because it believes this approach will provide a better assessment of the capacity and fitness of applicants and will result in a more qualified pool of eligibles. Additionally, the Office of Administration did not include in § 602.8 the Commission regulation making the job specification the primary basis and source of authority for the evaluation of the qualifications of applicants for examinations. See 4 Pa. Code § 95.14(a). Instead, the Office of Administration adopted this provision in § 602.1(b)(3) because the Office of Administration believes this subject matter is more appropriately addressed under application requirements.

Further, the Office of Administration did not incorporate in its temporary regulations the implied qualifications set forth in the Commission's regulations. See 4 Pa. Code § 95.14(b). The implied qualifications are redundant to inquiries made to determine merit and fitness under § 602.1(b) and (d) of these temporary regulations, are not appropriate inquiries in the application or examination process, and/or are more appropriately placed in job announcements.

*Administration of Examinations*

*Authority; Administration and Scoring of Examinations; Establishment and Maintenance of Competitive Standards; and Examination Accommodations*

Sections 602.9—602.12 pertain to the administration of examinations, including authority for the selection of the method of examination; administration and scoring of examination; and security of competitive standards, and implement 71 Pa.C.S. §§ 2301—2303 and 2305. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 95.20, 95.21(c), 95.22 and 95.23. In incorporating the corresponding Commission regulations, the Office of Administration did not adopt provisions that were redundant to obligations and duties set forth in Act 71 or that were more appropriately placed in a policy manual or procedures. See 4 Pa. Code §§ 95.21(a), (b); 95.22(a) and 95.23(b) (relating to scheduling of examinations; administration and scoring of examinations; and security of competitive standards). Additionally, § 602.9

(relating to authority) differs from the corresponding Commission regulation at 4 Pa. Code § 95.20 (relating to authority) because the Office of Administration recognizes that appointing authorities are responsible for selecting the method of examination, as required under Act 71. See 71 Pa.C.S. § 2302(b). In § 602.12 (relating to examination accommodations), the Office of Administration incorporated in its temporary regulations the corresponding Commission regulation but clarified that special accommodations may include alternative formats, extended time and an alternate method of examination, after consultation with the appointing authority. See 4 Pa. Code § 95.49 (relating to special examinations). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

*Public Notice of Examinations*

*Content and Publication of Examination Announcements*

Section 602.13 (relating to content and publication of examination announcements) pertains to public notice of examinations and implements 71 Pa.C.S. § 2304 (relating to public notice of examinations). The Office of Administration incorporated in its temporary regulations the corresponding provision of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.33(a) (relating to content and publication of examination announcements). The Office of Administration did not adopt the Commission regulations relating to maintenance of mailing lists, special assistance in recruitment or content of examination announcements as those provisions are more appropriately addressed in a policy manual. See 4 Pa. Code §§ 95.31, 95.32 (relating to maintenance of mailing lists; and special assistance in recruitment) and § 95.33(b). Additionally, in adopting the previously-referenced provision of the Commission's regulations, the Office of Administration made revisions for clarity.

*Ratings of Competitors*

*Qualifying Points on Examinations; Correction of Errors in Scoring or Eligibility; Calculation of Final Earned Ratings; Determination of Rank in Event of Tie; Examination Analysis and Alternatives; and Review of Eligibility or Examination Results.*

Sections 602.14—602.19 pertain to ratings of competitors, including qualifying points on examinations, correction of errors in scoring or eligibility, calculation of final earned ratings; determination of rank in event of tie; examination analysis and alternatives; and review of eligibility or examination results, and implement 71 Pa.C.S. § 2305 and §§ 2306 and 2307 (relating to establishment of eligible lists; and duration of eligible lists). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 95.41, 95.45—95.49. In incorporating the previously-referenced provisions of the Commission, the Office of Administration made modifications to reflect vacancy-based hiring and the alternate rule to the rule of three as required by Act 71. See 71 Pa.C.S. §§ 2401 and 2402. The Office of Administration did not adopt corresponding Commission regulations relating to the effect of failing a higher but passing a lower level test and the effect of passing a higher but failing a lower level

test because those provisions do not reflect current testing procedures. See 4 Pa. Code § 95.41(c) and (d) (relating to qualifying points on examinations).

In § 602.19 (relating to review of eligibility or examination results), the Office of Administration incorporated in its temporary regulations the Commission's corresponding provision regarding procedures for challenging a finding of ineligibility or an examination score, except that the temporary regulations modified the time in which to challenge a finding of ineligibility or an examination score from 30 to 20 days. See 4 Pa. Code § 95.71 (relating to review of eligibility or examination results). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

#### *Establishment of Eligible Lists*

##### *Eligible Lists*

Section 602.20 (relating to eligible lists) pertains to the establishment of eligible lists and implements 71 Pa.C.S. § 2306. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 95.51 (relating to eligible lists). Additionally, in adopting the previously-referenced provision of the Commission's regulations, the Office of Administration made revisions for clarity.

##### *Duration of Eligible Lists*

##### *Extension and Cancellation of Eligible Lists and Amendment of an Eligible List*

Sections 602.21 and 602.22 (relating to extension and cancellation of eligible lists; and amendment of an eligible list) pertain to the duration of employment and promotion list, including extension and cancellation of eligible lists and amendment of an eligible list, and implement 71 Pa.C.S. § 2307. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 95.61 and 95.63 (relating to extension and cancellation of eligible lists; and amendment of an eligible list). The Office of Administration did not adopt the Commission regulation allowing up to 4 years for the duration of employment and promotion lists. Under Act 71, eligible lists terminate upon the establishment of an appropriate, new, eligible list, unless otherwise prescribed by the Office of Administration. While the Office of Administration may in its discretion fix the duration of eligibility list for a period of 4 years, the Office of Administration does not anticipate establishing lists for a 4-year period and thus, will consider the duration of lists on a case by case basis. See 4 Pa. Code 95.61(a). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

### **APPOINTMENT AND PROMOTION OF EMPLOYEES IN THE CLASSIFIED SERVICE**

#### *Certification*

##### *Multiple Lists; Certification of Eligible Lists; and Effect of Appointment from List.*

Sections 603.1—603.3 (relating to multiple lists; certification of eligible lists; and effect of appointment from list)

pertain to certification, including multiple lists, certification of eligible lists, effect of appointment from list, and restoration of eligibility and implement 71 Pa.C.S. § 2401. The Office of Administration incorporated in its temporary regulations corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to the Commission's regulations to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 97.1—97.4. As authorized by Act 71, the Office of Administration incorporated vacancy-based hiring standards throughout this subchapter. See 71 Pa.C.S. § 2401(1)(i). In incorporating the Commission's regulation relating to duration of certification (4 Pa. Code § 97.3(b) (relating to certification of eligible lists)), the Office of Administration modified the duration of the certification from 60 to 90 business days as required by Act 71. See 71 Pa.C.S. § 2402(b). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

#### *Selection and Appointment of Eligibles*

##### *Appointment Process; Removal of Eligible for Certification or Appointment; Prohibition Against Securing Withdrawal from Competition; and Consideration of Certified Eligibles.*

Sections 603.4—603.7 pertain to the appointment process; removal of eligibles; prohibition against securing withdrawal from competition; and consideration of certified eligible and implement 71 Pa.C.S. § 2402. The Office of Administration incorporated in its temporary regulations corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to the Commission's regulations to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 97.11, 97.13, 97.15 and 97.16. As authorized in Act 71, the Office of Administration incorporated standards for the alternate rule throughout this subchapter. See 71 Pa.C.S. §§ 2401 and 2402. In § 603.4(a) (relating to appointment process), the Office of Administration clarified that the rule of three does not prohibit an appointing authority from making an appointment if there are fewer than three available eligibles. This provision was previously in the Commission's definition of the rule of three; however, the Office of Administration determined that it is more appropriately placed in this section. Similarly, section 603.4(b)(4) clarifies that the alternate rule does not prohibit an appointing authority from making an appointment if there are fewer than the alternate rule elected by the appointing authority. In § 603.5 (relating to removal of eligible for certification or appointment), the Office of Administration expanded upon the procedures set forth in the Commission's corresponding regulation regarding removal of eligibles for certification or appointment. See 4 Pa. Code § 97.13 (relating to removal of eligible). In the Commission's corresponding regulation, Management Directive 580.34 (Removal of Eligibles for Certification or Appointment in the Classified Service) is incorporated by reference whereas the Office of Administration prefers regulatory requirements for those procedures. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.



*Substitute Appointments*

*Conditions for Substitute Appointments and Promotions and Rights of Substitute Employees*

Sections 603.8 and 603.9 (relating to conditions for substitute appointments and promotions; and rights of substitute employees) pertain to substitute appointments in the appointment and promotion of employees in the classified service, which implements 71 Pa.C.S. § 2403 (relating to substitution during military leave). The Office of Administration incorporated in its temporary regulations corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to the Commission's regulations to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 97.20, 97.22 and 97.24 (relating to conditions for substitute appointments/promotions; rights of substitute employees; and duration of substitute appointments). Act 71 only provides for substitute appointments when an employee in the classified service is granted military leave; therefore, the Office of Administration did not incorporate in its temporary regulations the Commission's regulations that provide for substitute appointments for parental, sick or other leave where right of return is guaranteed or promotion. Additionally, the Office of Administration did not adopt corresponding Commission regulations that were procedural in nature and which are more appropriately addressed in a policy manual. See 4 Pa. Code § 97.21 (relating to evidence of substitute appointment). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

*Probationary Period*

*Duration and Extension of Probationary Periods; Effects of Leaves of Absence; Service in Higher-Level Position; Service in Same Level Position; Restoration to Eligible List; Trainee Jobs; Probation Following Promotion; and Notice About Performance.*

Sections 603.10—603.17 pertain to probationary periods, including duration and extension of probationary periods; effects of leaves of absence; service in higher-level position; service in same level position; restoration to eligible list; trainee jobs; probation following promotion; and notice about performance, and implement 71 Pa.C.S. §§ 2404 and 2605 (relating to probationary period; and rights of promoted employee during probationary period). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 97.31—97.39. In § 603.10(a) (relating to duration and extension of probationary periods), consistent with Act 71, the Office of Administration clarified that the length of the probationary period is a minimum of 6 months, as prescribed by the Office of Administration. See 71 Pa.C.S. § 2404(a)(2). In § 603.10(c), the Office of Administration clarified that probationary periods must be successfully completed by employees before regular status is conferred and appointing authorities must act affirmatively to confer regular status. This clarification is consistent with the Commission's current practice and Management Directive 580.8, Amended (Classified Service Probationary Periods). For the same reasons noted previously under substitute appointments, the Office of Administration did not incorporate the Commission regulation requiring vacated positions to be filled on a substitute basis. See 4 Pa. Code

§ 97.38(1) (relating to probation following promotion). The Office of Administration also clarified in § 603.16(4) (relating to probation following promotion) that 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. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

**EMPLOYEES IN THE CLASSIFIED SERVICE**

*Service Standards and Ratings*

*Establishment of System; Reporting of Performance Evaluations; Review of Performance Evaluations; and Application of Performance Evaluations*

Sections 604.1—604.4 pertain to the establishment of a job-related system of performance evaluations and implement 71 Pa.C.S. § 2501 (relating to performance ratings). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission. See 4 Pa. Code §§ 99.11 and 99.13—99.15. The Office of Administration did not adopt the Commission regulation addressing signatures on evaluation forms as those provisions are more appropriately addressed in policy manual. See 4 Pa. Code § 99.14 (relating to review of performance evaluations). In adopting the corresponding provisions of the Commission's regulations, the Office of Administration made modifications for clarity.

*Reassignments and Transfers*

*Reassignments and Transfers Authorized; Initiation of Transfers; Limitation on Transfer; Effect of Transfer on Probationary Period; and Transfer of Classified Service Employees Entering the Senior Management Service*

Sections 604.5—604.9 pertain to reassignments and transfers authorized under Act 71. See 71 Pa.C.S. § 2502 (relating to transfers and reassignments). The Office of Administration incorporated in its temporary regulations corresponding provisions of The Rules of The Civil Service Commission. See 4 Pa. Code §§ 99.21—99.24 and 99.27. In incorporating the corresponding provisions, the Office of Administration made appropriate modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. The Office of Administration did not adopt the Commission regulation relating to effect of reassignment on promotion rights because the content of this provision is more appropriately addressed within a policy manual. See 4 Pa. Code § 99.25 (relating to effect of reassignment on promotion rights). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Reductions in Pay or Demotions*

*Reductions of Pay Within the Same Job; Demotions to a Different Job; and Effect of Demotion on Status*

Sections 604.10—604.12 (relating to reductions of pay within the same job; demotions to a different job; and effect of demotion of status) pertain to reductions in pay or demotions, including reductions of pay within the same job, demotions to a different job and effect of demotion on status, and implement 71 Pa.C.S. §§ 2503 (relating to demotions) and 2605. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission without substantive change other than to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 99.31, 99.32

and 99.34 (relating to reductions of pay within the same class; demotions to a different class; and effect of demotion on status). In adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Reclassifications; Status of Incumbents of Reclassified Positions*

*Reclassifications and Effect of Reclassification on Probationary and Regular Status*

Sections 604.13 and 604.14 (relating to reclassifications; and effect of reclassification on probationary and regular status) pertain to reclassifications, including effect of reclassification and effect of reclassification on probationary and regular status, and implement 71 Pa.C.S. §§ 2505 (relating to effect of reclassifications) and 2605. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 99.41 and 99.43 (relating to effect of reclassification; and effect of reclassification on probationary period). In § 604.14(b), appointing authorities must submit requests for reclassifications to the Office of Administration. Additionally, under § 604.13(c), the Office of Administration reserves the right to deny an appointing authority's request for reclassification if it appears the request is designed to circumvent merit system principles as set forth in Act 71. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Compensation*

*Effect of Change in Compensation Schedules*

Section 604.15 (relating to effect of change in compensation schedules) pertains to effect of change in compensation schedules and implements 71 Pa.C.S. § 2503 and §§ 2103 and 2609 (relating to definitions; and seniority). The Office of Administration incorporated in its temporary regulations the corresponding provision of The Rules of The Civil Service Commission without substantive change other than to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code 99.52 (relating to effect of change in compensation schedules). In adopting the previously-referenced provision of the Commission's regulations, the Office of Administration made minor revisions for clarity.

**SEPARATION OF EMPLOYEES  
FROM CLASSIFIED SERVICE**

*Furlough*

*General Provisions*

Section 605.1 (relating to general provisions) pertains to furloughs and implements 71 Pa.C.S. §§ 2601 and 2602 (relating to temporary and permanent separations; and furlough). The Office of Administration incorporated in its temporary regulations the corresponding provision of The Rules of The Civil Service Commission without substantive change other than to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 101.1 (relating to furlough). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Removal and Suspension*

*Generally*

Section 605.2 (relating to generally) pertains to removal and suspension and implements 71 Pa.C.S. §§ 2603 and 2607 (relating to suspension; and removal). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of the Civil Service Commission regarding suspension and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 101.21(b) (relating to generally). The Office of Administration did not adopt the Commission's regulation at 4 Pa. Code § 101.21(a) because providing examples of good cause for suspension is unnecessary. In removing the examples of "good cause" for suspension, the Office of Administration recognizes that such determinations are based on the facts of each particular case. The Office of Administration also included the just cause standard for removal in this section which is based upon statutory authority in Act 71. See 71 Pa.C.S. § 2607. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Resignation*

*General Provisions: Notice of Acceptance or Rejection; Reemployment after Resignation; and Resignation Following Leave of Absence*

Sections 605.3—605.6 pertain to resignation, including notice of acceptance or rejection; reemployment after resignation; and resignation following leave of absence, and implement 71 Pa.C.S. 2606 (relating to resignation). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 101.51, 101.52, 101.54 and 101.55. The Commission's regulations at 4 Pa. Code § 101.51 (relating to general) require written notice for resignations of voluntary termination of employment. The Office of Administration did not adopt the Commission's written notice requirement, but instead, § 605.3 (relating to general) of the temporary regulations recognizes either written or verbal resignations as authorized in Act 71. See 71 Pa.C.S. § 2606(a)(1). The Office of Administration also did not adopt the Commission regulation allowing for approval of reemployment after resignation only where the "former employee would derive no greater rights or privileges as a result of reinstatement than if continued as a regular employee or granted a leave of absence without pay." See 4 Pa. Code § 101.54(b) (relating to reemployment after resignation). The Office of Administration determined that this inquiry is one that an appointing authority should pursue when considering whether to request approval from the Office of Administration as the appointing authority is in a better position to know the circumstances of the reinstatement. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made minor revisions for clarity.

*Leave of Absence*

*General; Extension or Renewal of Leave; and Returning Employees*

Sections 605.7—605.9 (relating to general; extension or renewal of leave; and returning employees) pertain to leave of absences, including extension or renewal of leave and returning employees, and implement 71 Pa.C.S.

§ 2608 (relating to leave of absence). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 101.61, 101.62 and 101.64 (relating to general; extension or renewal of leave; and returning employees). The Office of Administration did not adopt the Commission regulation at 4 Pa. Code § 101.61(b) which addresses substitute employment. As previously indicated, substitute appointments are only applicable to military leave of absences, thus it is not necessary or appropriate to address substitute employment as it pertains to other types of leave of absences. See 71 Pa.C.S. § 2403. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

*Seniority*

*Break in Service*

Section 605.10 (relating to break in service) pertains to breaks in service and implements 71 Pa.C.S. § 2609. The Office of Administration incorporated in its temporary regulations the corresponding provision of The Rules of The Civil Service Commission and made modifications to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code § 101.71 (relating to break in service). In adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration clarified when break in service occurs. The Office of Administration did not adopt the Commission regulation giving service credit for seniority purposes to employees who return within 1 year after a break in service because Act 71 does not authorize such credit. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

**PROHIBITIONS, PENALTIES AND ENFORCEMENT**

*Office of Administration Review of Legality of Employment*

*Report of Personnel Change; Action on Personnel Change; and Effect of Out-of-Class Work*

Sections 606.1—606.3 (relating to report of personnel change; action on appointment or personnel change; and effect of out-of-class work) pertain to reporting requirements of personnel changes, action on personnel changes, and effect of out-of-class work and implement 71 Pa.C.S. § 2202(2), which grants the Office of Administration broad authority to direct and supervise the administrative work of merit system employment. The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 103.5—103.7 (relating to report of personnel changes; action on personnel changes; and effect of out-of-class work). The Office of Administration did not adopt Commission regulations that were procedural in nature or redundant to requirements set forth in Act 71. See 4 Pa. Code § 103.6(a) and (b). Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made revisions for clarity.

*Political Activity*

*Prohibited Political Activities; Exception and Applicability; Complaint Procedure; and Complaint Content*

Sections 606.4—606.6 (relating to prohibited political activities; exception and applicability; complaint procedure; and complaint content) pertain to political activity, including applicability of the political activity prohibition, complaint procedures and complaint content, and implement 71 Pa.C.S. § 2705 (relating to political activity). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 103.11—103.13 (relating to exception to prohibited political activities; complaint procedure; and complaint form). Additionally, in § 606.4(b), the Office of Administration incorporated the corresponding Commission regulation at 4 Pa. Code § 103.11, but modified it to conform with case law regarding certain employees on creditable leaves of absence to serve certain collective bargaining organizations. See *Pinto v. State Civil Service Commission*, 912 A.2d 787 (Pa. 2006). The Office of Administration did not adopt Commission regulations that were redundant to other regulatory provisions (4 Pa. Code § 103.14 (relating to prohibition of assessments)) or redundant to the statutory duties set forth in Act 71 (4 Pa. Code § 103.15 (relating to prohibition of discrimination)). In adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made modifications for clarity.

*Removal and Disqualification of Officers and Employees*

*Falsification or Concealment of Material Information; Notice of Violation of Act or Regulations; and Penalty for Violation*

Sections 606.7—606.9 (relating to falsification or concealment of material information; notice of violation of act or regulations; and penalty for violation) pertain to removal and disqualification of officers and employees, including falsification or concealment of material information; notice of violation of act or regulations; and penalty for violation. Section 606.7 implements 71 Pa.C.S. § 3104(b) (relating to false statement made under oath constitute perjury), and §§ 606.8 and 606.9 implement 71 Pa.C.S. § 2706 (relating to removal and disqualification of officers and employees). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 103.21—103.23 (relating to falsification or concealment of material information; notice of violation of act or rules; and penalty for violation). In incorporating the Commission's corresponding regulation at 4 Pa. Code § 103.23, the Office of Administration clarified in section 606.9 that individuals removed under 71 Pa.C.S. § 2706 are ineligible for reappointment for a period of time set by the Office of Administration and that the period of time may include permanent ineligibility. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made other modifications for clarity.

## NOTICE AND HEARINGS

### *Notice*

#### *Written Notice Required; Personnel Actions; Statement of Reasons; and Signatory Authority.*

Sections 607.1—607.4 pertain to written notice requirements for personnel actions affecting employees and implement 71 Pa.C.S. § 2801 (relating to notice). The Office of Administration incorporated in its temporary regulations the corresponding provisions of The Rules of The Civil Service Commission and made appropriate revisions to reflect the statutory transfer of duties from the Commission to the Office of Administration. See 4 Pa. Code §§ 105.1—105.5. Section 607.1 (relating to written notice required) incorporates the Commission's corresponding regulation regarding advance notice for personnel actions. See 4 Pa. Code § 105.5 (relating to time limits). The Office of Administration included time limits in § 607.1(d) but did not adopt time limits that were redundant to the requirements set forth in Act 71 or that may be more appropriately addressed in a policy manual. In § 607.2 (relating to personnel actions), for consistency and clarity, the Office of Administration incorporated notice requirements for personnel actions relating to probationary employees. See 4 Pa. Code § 101.31 (relating to removal during probationary periods). Under section 607.1(e), written notices of permanent separation, suspension for cause, furlough or involuntary demotion of a regular status employee must provide information on the employee's right to appeal to the Commission. Section 607.2 also requires written notice for the removal of a probationary employee after promotion when the employee is returned to a position or job held prior to promotion. Additionally, in adopting the previously-referenced provisions of the Commission's regulations, the Office of Administration made modifications for clarity.

#### *Practice and Proceedings Before the Office of Administration*

#### *Applicability of General Rules of Administrative Practice and Procedure; Hearings Before the Office of Administration; Representation; Authority of Presiding Officer; Record of Proceedings; Evidence; Subpoenas, Post-Hearing Briefs; Final Disposition.*

Given the limited investigative nature of most hearings that will be held by the Office of Administration under Act 71, the Office of Administration determined that it was more practicable to promulgate regulations for its hearings rather than follow the general format and/or content of The Rules of The Civil Service Commission or adopt 1 Pa. Code, Part II (relating to General Rules of Administrative Practice and Procedure) (GRAPP).

Accordingly, § 607.5 (relating to applicability of General Rules of Administrative Practice and Procedure) supersedes 1 Pa. Code Part II and makes GRAPP inapplicable to proceedings before the Office of Administration. Under § 607.6(a) and (b) (relating to hearings before the Office of Administration), all hearings must be open to the public and either the Secretary of Administration or designees authorized by the Secretary of Administration as presiding officers may conduct hearings scheduled by the Office of Administration. Section 607.6(c) and (d) set forth the types of administrative hearings the Office of Administration may hold—discretionary hearings and eligible list cancellation hearings. See 71 Pa.C.S. §§ 2202(a)(10) and 2307(d).

Section 607.6(c) also provides burden of proof procedures for discretionary hearings under 71 Pa.C.S. § 2202(a)(10). Section 607.6(e) addresses hearing notice requirements, including advance notice of scheduled hearings, content of notices and required posting by the Office of Administration. Section 607.6(f) provides standards for consolidation procedures, which are comparable to GRAPP procedures. See 1 Pa. Code § 35.45 (relating to consolidation). In § 607.6(g), the Office of Administration allows for severance of proceedings when the proceedings lack a common question of law or fact. Similar to GRAPP procedures, § 607.6(h) gives presiding officers authority to grant requests for continuances; however, the temporary regulations require a showing of good cause. Similar to the Commission's regulations at 4 Pa. Code § 105.18(b) (relating to procedure under section 951(d) of the act (71 P.S. § 741.951(d))), § 607.6(i) allows hearings to proceed when an interested individual or appointing authority fail to appear. Section 607.6(j) allows for additional hearings and evidence under limited circumstances which is similar to GRAPP procedures. See 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

Section 607.7 (relating to representation) concerns representation at hearings and is similar to the Commission's regulations at 4 Pa. Code § 105.14 (relating to legal representation). Section 607.8 (relating to authority of presiding officer) sets forth the authority of the presiding officer and is similar to GRAPP procedures. See 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers). Section 607.9 (relating to record of proceedings) concerns the record of proceedings and is comparable with GRAPP procedures. See 1 Pa. Code § 35.131 (relating to recording of proceedings). Sections 607.10 and 607.11 (relating to evidence; and subpoenas) are similar to the Commission's regulations at 4 Pa. Code §§ 105.13(a) and 105.14(a) (relating to form of hearing; and subpoenas). Section 607.12 (relating to post-hearing briefs) permits post-hearing briefs and is similar to GRAPP procedures. See 1 Pa. Code §§ 35.191—35.193 (relating to proceedings in which briefs are to be filed; content and form of briefs; and filing and service of briefs). Section 607.13 (relating to final disposition) addresses final dispositions and allows for proposed final dispositions when the presiding officer is not the Secretary of Administration.

#### *Fiscal Impact and Paperwork Requirements*

This temporary rulemaking should have minimal adverse fiscal impact on the Commonwealth or its political subdivisions. These temporary regulations transfer existing duties from the Commission to the Office of Administration. Other than the costs of the transition of duties, which is a statutory mandate, the Office of Administration does not anticipate increased costs for appointing authorities, the Commission or the Office of Administration. In fact, after the initial transition, the Office of Administration anticipates a decrease in costs due to the continued reduction in the use of test center examinations as well as the decommissioning of outdated Commission information technology systems. Appointing authorities that choose to use test center examinations will pay the actual cost of administering those examinations, instead of spreading those costs amongst appointing authorities that choose not to utilize that type of examination.

#### *Sunset Date*

The Office of Administration will monitor the cost effectiveness of its regulations and will do so with respect to these temporary regulations. Because these temporary regulations will expire 3 years following the publication of

these temporary regulations, the Office of Administration will re-assess the regulations and the effectiveness of the temporary regulations in formulating proposed and final rulemakings.

*Regulatory Review*

These temporary regulations are statutorily exempt from the Regulatory Review Act (71 P.S. §§ 745.1—745.15).

*Public Comment*

During the drafting of these temporary regulations, the Office of Administration solicited and received comment from the public. The Office of Administration invited collaboration and comment from appointing authorities and other interested stakeholders while drafting these temporary regulations. After considering the input from appointing authorities and other interested stakeholders, the Office of Administration distributed an exposure draft to appointing authorities and stakeholders and again considered the input, and where appropriate, incorporated the suggestions and comments in the annex and preamble. The Office of Administration will solicit additional input when formulating the proposed and final rulemakings.

MICHAEL NEWSOME,  
*Secretary*

*(Editor’s Note: Title 4 of the Pennsylvania Code is amended by adding temporary regulations in §§ 601.1—601.8, 602.1—602.22, 603.1—603.17, 604.1—604.15, 605.1—605.10, 606.1—606.9 and 607.1—607.13 to read as set forth in Annex A.)*

**Fiscal Note:** 99-11. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART XV. OFFICE OF ADMINISTRATION**

**Subpart A. CIVIL SERVICE REFORM—  
TEMPORARY REGULATIONS**

**CHAPTER 601. GENERAL PROVISIONS**

**GENERAL PROVISIONS**

Sec.	
601.1.	Short title.
601.2.	Purpose.
601.3.	Definitions.
601.4.	Veterans’ preference.
601.5.	Age Preference
601.6.	Reasonable accommodations.
601.7.	Service to departments, boards and commissions, agencies and political subdivisions; cooperation with other civil service agencies.
601.8.	Electronic records and signatures.

**§ 601.1. Short title.**

This subpart shall be known and cited as the “Merit System Employment Regulations.”

**§ 601.2. Purpose.**

(a) This subpart is designed to effectuate the primary purpose of civil service reform, as required by 71 Pa.C.S. Part III (relating to civil service reform), declared to create and sustain a modern merit system of employment within the Commonwealth work force that promotes the hiring, retention and promotion of highly qualified individuals, ensuring that government services are efficiently and effectively delivered to the public.

(b) This subpart implements and supplements the act and is to be read together with the applicable provisions of the act.

**§ 601.3. Definitions.**

Words, terms and phrases, when used in this subpart, have the meaning as set forth in 71 Pa.C.S. Part III (relating to civil service reform), unless the context clearly indicates otherwise. The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Act of June 28, 2018 (P.L. 460, No. 71) (71 Pa.C.S. Part III (relating to civil service reform)).

*Alternate rule*—A rule that gives appointing authorities the ability to select from all eligibles on an eligibility list or a specific alternate number of eligibles, other than three, but not less than three.

*Certification*—The referral of one or more eligibles by the Office of Administration to an appointing authority, in order to fill one or more positions.

*Disability*—As defined by the Americans with Disabilities Act of 1990, as amended (42 U.S.C.A. §§ 12101—12213), a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

*Eligible Veteran*—An individual, excluding a spouse, who is eligible to receive an employment preference pursuant to 51 Pa.C.S. Chapter 71 (relating to veterans’ preference).

*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.

*Examination*—A test, series of tests, or assessments used to determine the degree to which applicants or employees are qualified for appointment or promotion, including examinations delivered at test centers, oral tests, ratings of qualifications, performance tests, medical tests, physical or agility tests, personality or interest inventories, and biographical inventories.

*Job specification*—A written description of a job that defines and describes representative duties and responsibilities and sets forth the experience and training that provides the knowledge, skills and abilities essential to the performance of the work of the job.

*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 non-civil service position.

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

*Preferred reemployment list*—A list of persons who had regular or probationary status and could not be returned from a civil service leave of absence due to the lack of a vacant position.

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

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

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

*Reclassification*—The change of a classification of a position from one job and code to another job and code.

*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 voluntarily separated from civil service employment.

*Resignation*—The voluntary termination of employment by an employee, which is evidenced by the employee's written or verbal notice.

*Rule of three*—The requirement that the appointing authority choose from among the three-highest-ranking available eligibles in filling a particular vacancy.

*Senior Management Service*—Positions in the Commonwealth unclassified service that have broad policy participation and management responsibility.

*Seniority*—The amount of time an employee has served in a position in the classified service, provided that the employment has been on a continuous basis, calculation and use of which is defined in this subpart.

*Separation*—The voluntary or involuntary termination of employment, which includes temporary and permanent terminations.

*Special Advisor for Veterans' Programs*—The individual appointed by the Secretary of Administration under 71 Pa.C.S. § 2202(a)(12) (relating to duties of Office of Administration).

*Suspension*—The temporary and 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.

*Trainee*—A qualified person appointed or promoted to a training level job.

*Training period*—The period of time prescribed for a trainee job, 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 job for which trained.

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

#### § 601.4. Veterans' preference.

(a) *Eligible Veterans.* In determining standing on each certified eligibility list, the Office of Administration will credit an additional 10 points to the final examination score obtained by an eligible veteran, in accordance with 51 Pa.C.S. Chapter 71 (relating to veterans' preference).

(b) *Spouses.* A spouse of a deceased or disabled veteran will receive the same credit to the final examination score given to an eligible veteran under subsection (a), in accordance with 51 Pa.C.S. Chapter 71.

(c) *Appointing Authorities.* An appointing authority shall give preference to eligible veterans and spouses of deceased or disabled veterans in accordance with the act, this subpart and 51 Pa.C.S. Chapter 71.

(d) *Required Documentation.* To establish veterans' preference, eligible veterans shall submit a copy of service discharge, DD Form 214 or other equivalent military documentation acceptable to the Office of Administration showing date of entry, into the military, successful completion of basic training, character of service, and where applicable, completion of the military service commitment.

(1) A widow or widower of an eligible veteran shall submit a copy of the spouse's documents as required in subsection (d) and a certified copy of the death certificate of the spouse.

(2) A spouse of a disabled veteran shall submit documentation as required by the Office of Administration, including a copy of the spouse's documents, as required in subsection (d); a United States Department of Veterans Affairs letter dated within the past 6 months verifying the eligible veteran's qualifying disability rating; and a signed statement from the disabled veteran authorizing the use of the preference in accordance with 51 Pa.C.S. § 7108 (relating to preference of spouses).

(e) *Special Advisor for Veterans' Programs.* The Secretary of Administration will appoint a Special Advisor for Veterans' Programs who shall be a veteran and will serve at the pleasure of the Secretary of Administration.

(f) *Powers and duties of the Special Advisor for Veterans' Programs.*

(1) The Office of Administration will provide the Special Advisor for Veterans' Programs a copy of the results of audits conducted by the Commission under 71 Pa.C.S. § 3304 (relating to audits of application of veterans' preference).

(2) The Special Advisor for Veterans' Programs may recommend investigations, as authorized under 71 Pa.C.S. § 2202(a)(10) (relating to duties of Office of Administration), of appointments or changes in employment in the classified service not in compliance with 51 Pa.C.S. Chapter 71.

#### § 601.5. Age preference.

(a) In accordance with the act, this subpart and section 2203-A of the Administrative Code of 1929 (71 P.S. § 581-3(b)), the Department of Aging shall give age preference to individuals who are 60 years of age or older.

(b) Notwithstanding individuals qualifying for veterans' preference under 51 Pa.C.S. Chapter 71 (relating to veterans' preference), the Department of Aging may select an individual qualifying for age preference in accordance with the act, this subpart and 71 P.S. § 581-3(b).

(c) Certifications issued to the Department of Aging will indicate those applicants with age preference status.

#### § 601.6. Reasonable accommodations.

(a) *Purpose.* This section establishes the procedures for requesting and providing reasonable accommodations in the application and examination process for an employee or applicant with a disability seeking an appointment or promotion.

(b) *Applications and Examinations.* Reasonable accommodations in the application and examination process will be provided to individuals with a disability.

(c) *Requests for Accommodations.* An applicant or employee seeking appointment or promotion may request an accommodation by submitting an application for accommodation on a form prescribed by the Office of Administration.

**§ 601.7. Service to departments, boards and commissions, agencies and political subdivisions; co-operation with other civil service agencies.**

(a) *Acquisition of services.* The services and facilities of the Office of Administration and its staff will be made available to departments, boards, commissions, or agencies, and political subdivisions of the Commonwealth under the following terms and conditions:

(1) A formal request for extension of the services of the Office of Administration shall be made in writing and shall be signed by the executive head of the requesting department, or by the chair of the board, commission, or agency, accompanied by a resolution adopted by the board, commission, or agency, or by the proper official of the political subdivision, as appropriate.

(2) If less than a complete merit system is desired, a request for extension of the services of the Office of Administration shall state in detail the services requested. If a complete merit system is desired, the request shall specify the desired exceptions to the application of the act.

(3) Granting of the request shall be evidenced by a formal written contract or agreement, consistent with this section, between the department, board, commission, agency, or political subdivision and the Office of Administration.

(4) A request for the extension of services may be granted in whole or in part at the discretion of the Office of Administration.

(b) *Reimbursement for services.* Reimbursement shall be as follows:

(1) An appointing authority shall reimburse the Office of Administration on a semi-annual basis for the actual cost of preparing, administering and rating examinations delivered at test centers.

(2) For all other services and facilities, an appointing authority shall reimburse the Office of Administration for the semi-annual cost of services and facilities made available, in the proportion which the cost of the services and facilities bears to the total cost of these services and facilities of the Office of Administration, based on the ratio of the appointing authority's employees in the classified service to those of all the appointing authorities serviced by the Office of Administration.

(3) At the request of the Office of Administration, the number of employees in the classified service in each appointing authority serviced shall be reported to the Office of Administration.

(c) *Personnel actions by political subdivisions.* A personnel action taken by a political subdivision under contract with the Office of Administration shall conform to the act, this subpart, and the contract executed under subsection (a)(3), unless the action would have an impossible or unreasonable result, in which case the Office of Administration will determine the appropriate action to be taken.

**§ 601.8. Electronic records and signatures.**

The Office of Administration or an appointing authority may, in its discretion, utilize and accept, in the form and manner prescribed by such entity, electronic records and electronic signatures, where written documents, forms, signatures, or other required submissions are required by this subpart, provided that such records and signatures comply with the Uniform Electronic Transactions Act (73 P.S. §§ 2260.303—2260.312), and other laws governing electronic records and signatures.

**CHAPTER 602. SELECTION OF EMPLOYEES FOR ENTRANCE TO, OR PROMOTION IN, THE CLASSIFIED SERVICE**

**Subchap.**

- A. EXAMINATIONS REQUISITE FOR APPOINTMENT AND PROMOTION
- B. NATURE OF EXAMINATIONS
- C. ADMINISTRATION OF EXAMINATIONS
- D. PUBLIC NOTICE OF EXAMINATIONS
- E. RATINGS OF COMPETITORS
- F. ESTABLISHMENT ELIGIBLE LISTS
- G. DURATION OF ELIGIBLE LISTS

**Subchapter A. EXAMINATIONS REQUISITE FOR APPOINTMENT AND PROMOTION**

**Sec.**

- 602.1. Application requirements.
- 602.2. Residence requirements.
- 602.3. Selective certifications.
- 602.4. Promotion procedure.

**§ 602.1. Application requirements.**

(a) *Submission of Applications.* An application for entrance to, or promotion in, the classified service, shall be made in a format prescribed by the Office of Administration. An application 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) *Application.* An application for entrance to, or promotion in, the classified service is accessible on the Office of Administration's web site.

(2) *Completeness of application.* The Office of Administration may reject an incomplete application.

(3) *Timeliness of applications.* An application shall be submitted by the date and time if specified in the public notice of examination. An application received prior to midnight of the closing date indicated on the public notice of examination or a vacancy posting will be deemed filed within the time limit.

(b) *Evidence of merit and fitness.*

(1) An applicant shall supply information relevant for determining whether the applicant possesses the minimum requisites for appointment or promotion.

(2) The Office of Administration may require an applicant to supply certificates and other appropriate documents as may be relevant in assessing the applicant's fitness and qualifications for appointment or promotion.

(3) The job specification shall be the primary basis and source of authority for the evaluation of the minimum qualifications of applicants for examinations.

(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 age, race, color, religious creed, ancestry, national origin, gender, sexual orientation, gender identity or expression, political opinions or affiliations, union membership or affiliations, AIDS or HIV status, or disability nor will the information be required in another manner by an official or employee of the Office of Administration or of an appointing authority in connection with the examination, certification or appointment of an applicant for another purpose.

(2) The Office of Administration may make inquiries of an applicant's age or national origin, or both, as is necessary to comply with Federal and State laws and regulations and this subpart.

(3) The Office of Administration 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 laws and regulations on equal opportunity. Applicants shall be informed that response to questions is not mandatory.

(d) *Rejection of applicants and disqualification of eligibles.* The Office of Administration is not required to examine, nor certify after examination, an applicant who lacks the established or announced requirements for admission to the examination or for appointment from an entrance or promotion list. The Office of Administration may refuse to examine an eligible applicant; or after examination, remove the eligible from an eligible list; or otherwise refuse to certify an eligible applicant who:

(1) Has been convicted of or has pled guilty to a crime, including a plea of nolo contendere, or has engaged in conduct that renders the eligible unfit or unsuitable for the position sought.

(2) Has been terminated from employment for incompetency or misconduct that renders the applicant unfit or unsuitable for the position sought.

(3) Has made a false statement, or omitted a material fact, or engaged in, or attempted to engage in, deception or fraud in application, examination, securing eligibility, or seeking appointment.

(4) Lacks professionalism, honesty, trustworthiness, and dependability.

(5) Does not meet qualifications required by Federal or State law or regulation.

(e) *Discretionary acceptance of applications.* The Office of Administration may extend the deadline for the acceptance of applications 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. The Office of Administration, in its discretion, may accept applications filed after the announced final filing date if it determines extraordinary circumstances warrant acceptance.

(f) *Notice of rejection 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.

#### § 602.2. 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 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, bonds and automobiles within this Commonwealth.

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

(v) Current registration to vote in this Commonwealth.

(2) A former resident 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 or satisfied the requirements set forth in sections 1327 and 1327.1 of the Public School Code of 1949 (24 P.S. §§ 13-1327 and 13-1327.1), 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 within 5 years of applying for a position in the classified service.

(iii) Graduated or attended a public, private or nonpublic secondary school in this Commonwealth and graduated from a postsecondary institution in the Commonwealth within 5 years of applying for a position in the classified service.

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

(1) A person appointed, promoted or reinstated to a position in the classified service shall be a resident, as defined in subsection (a), unless residency has been waived under subsection (c). The provisions in this paragraph do not apply to a person who previously held regular civil service status and is returned to employment from an approved leave of absence without pay, through mandatory reemployment, or through contractual recall or placement rights.

(2) The Office of Administration, 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 job 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 Office of Administration may certify residents of contiguous counties or districts or of the entire Commonwealth as deemed appropriate by the Office of Administration.

(4) If an eligible changes residence from one district or county to another district or county of this Commonwealth, the Office of Administration 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 insufficient number of qualified residents of this Commonwealth, as defined in subsection (a), available for a particular occupation, the Office of Administration, upon request by one or more appointing authorities, may waive the residency requirement for a position, a job or a group of jobs.

#### § 602.3. Selective certifications.

(a) Upon the request of an appointing authority, the Office of Administration may impose special requirements and may restrict application for or selectively certify positions.

(b) A request to impose special requirements shall be submitted in a form prescribed by the Office of Administration.

#### § 602.4. Promotion procedure.

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



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

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

(3) By appointment of a Commonwealth employee of a given appointing authority or between appointing authorities, who appear on an appropriate employment list and who meet eligibility criteria as established by the Office of Administration.

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

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

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

(1) Except as indicated in this subsection, a promotion examination shall be open to a regular or probationary status employee who meets the qualifications and who occupies a position with a lower maximum salary. As determined by the Office of Administration, a promotion examination may be limited to employees occupying positions in specified jobs.

(2) The Office of Administration may, after consultation with the appropriate appointing authorities, establish the length of service required of an employee in the qualifying job or jobs for eligibility to participate in a promotion examination.

(3) As determined by the Office of Administration, a promotion examination may be interdepartmental or intradepartmental.

(c) *Promotion without examination.* Promotion without examination may be accomplished under the following circumstances provided that the promotion does not circumvent merit system principles as set forth in the act:

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

(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 subject to Office of Administration approval:

(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 job 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 jobs 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 job 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 knowledge, skills and abilities of the previously or currently held job with those needed for the posted position.

(ii) *Noncompetitive promotion without examination.* An appointing authority shall ensure that the employee meets the experience and training requirements of the higher-level job, has regular status, and meets the meritorious service and seniority requirements. The appointing authority shall provide the Office of Administration with justification for using a noncompetitive promotion without examination.

(3) When a classification review reveals that a position should 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-level job.

(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 the established requirements for the higher position.

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

(5) When there is a labor agreement covering a position to which an employee is 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, is ineligible for appointment or promotion from any list and promotion without examination.

**Subchapter B. NATURE OF EXAMINATIONS**

Sec.	
602.5.	Frequency of examinations.
602.6.	Cooperation regarding examinations.
602.7.	Tests in examinations.
602.8.	Use of position descriptions in examinations.

**§ 602.5. Frequency of examinations.**

The Office of Administration will administer examinations to establish employment and promotion lists when necessary to meet or anticipate the employment needs of appointing authorities.

**§ 602.6. Cooperation regarding examinations.**

(a) *Review of examination content.* The Office of Administration may collaborate with representatives of appointing authorities, qualified testing organizations and other qualified individuals regarding the content of examination material. The interchange of information shall be made under circumstances and subject to conditions designed to prevent premature disclosure of examination content to prospective applicants.

(b) *Cooperative testing.* The Office of Administration may authorize collaboration with another public testing or placement agency in a program of cooperative testing of applicants, if competitive principles are observed.

**§ 602.7. Tests in examinations.**

(a) *Types of tests.* In addition to written, oral and performance tests, the Office of Administration may administer an evaluation of education and experience and may authorize medical tests, physical strength and physical agility tests, and other types of tests, singly or in combination as the circumstances warrant. For promotional examinations, the Office of Administration may authorize other performance criteria, such as seniority and performance evaluations. Performance evaluations may not be a weighted factor in an interdepartmental promotion examination.

(b) *Weights of tests.* The Office of Administration, after considering the relative value of the tests in assessing the relative capacity and fitness of applicants to perform the duties of the job to which they seek to be appointed or promoted, and after consultation with the appointing authority, will fix the relative weights of the tests. Modifications to the relative weights will be announced to all applicants.

**§ 602.8. Use of position descriptions in examinations.**

(a) *Basis for examinations.* The position description shall be the primary basis and source of authority for the content and level of difficulty of examinations. Supplemental job information, obtained through job analysis, and job specifications may be used as a further basis for examination standards.

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

### Subchapter C. ADMINISTRATION OF EXAMINATIONS

Sec.	
602.9.	Authority.
602.10.	Administration and scoring of examinations.
602.11.	Establishment and maintenance of competitive standards.
602.12.	Examination accommodations.

**§ 602.9. Authority.**

The appointing authority shall select the method of examination that shall be used for the individual position or job for which the employment or promotion list is being established. Except as otherwise authorized in this subpart, or as authorized in writing by the Office of Administration, appointing authorities may not develop and administer their own examinations for employment or promotion in the classified service.

**§ 602.10. Administration and scoring of examinations.**

(a) *Notice of examinations.* An applicant will be notified of admittance or non-admittance to examinations. An applicant shall be given a delayed examination in place of the one for which the applicant failed to appear if the failure to appear was caused by an act or omission of the Office of Administration or another appropriate reason, as determined by the Office of Administration.

(b) The Office of Administration may authorize postponement, cancellation or rescheduling of examinations.

(c) *Cancellation of part of an examination.* Whenever the Office of Administration 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 Office of Administration may cancel that part or parts and reassign the weights, in an equitable manner, to the remaining part or parts.

(d) *Retaking examination.* An applicant may retake an examination provided the job announcement sets a specified date or time for retaking the examination. Standing on an eligible list will be determined by the score received on the most recent examination.

**§ 602.11. Establishment and maintenance of competitive standards.**

(a) *Maintenance of competitive conditions.* An applicant for an examination will be given equal opportunity to demonstrate relative merit and fitness. The Office of Administration reserves the right to cancel tests or appropriate sections thereof, if severable, whenever the conditions under which a test is held have materially impaired its competitive nature or worth in assessing qualifications.

(b) *Cheating on examinations or seeking undue advantage.* 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 will be disqualified.

(c) *Examination materials.* An applicant 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. An applicant will be notified of these requirements, and no examiner, proctor, monitor or other person charged with the supervision of an applicant or group of applicants will have authority to waive it.

(d) *Violations.* The Office of Administration may disqualify an applicant or refuse to certify an eligible person who violates this section.

**§ 602.12. Examination accommodations.**

The Office of Administration may make reasonable accommodations for an applicant with a disability, as defined by § 601.3 (relating definitions), to ensure the opportunity to fairly compete for and pursue career opportunities. An examination accommodation may include alternative formats, extended time, adjustments to examinations, or after consultation with the appointing authority, an alternate method of examination. An accommodation shall be designed to ensure that an applicant with a disability receives equal and fair participation and consideration in the examination process.

### Subchapter D. PUBLIC NOTICE OF EXAMINATIONS

Sec.	
602.13.	Content and publication of examination announcements.

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

The Office of Administration will determine the content, method, and scope of publication for each examination announcement. The publication may be electronic. An examination announcement 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 or Statewide and may include both in-State and out-of-State locations.

**Subchapter E. RATINGS OF COMPETITORS**

- Sec.
- 602.14. Qualifying points on examinations.
- 602.15. Correction of errors in scoring or eligibility.
- 602.16. Calculation of final earned ratings.
- 602.17. Determination of rank in event of tie.
- 602.18. Examination analysis and alternatives.
- 602.19. Review of eligibility or examination results.

**§ 602.14. Qualifying points on examinations.**

(a) *Basis for determination.* The Office of Administration sets qualifying points for each part or parts of examinations. The determination may 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) *Qualifying points.* When there is a multipart examination, the Office of Administration 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 the entire examination.

**§ 602.15. Correction of errors in scoring or eligibility.**

The Office of Administration, upon finding an error in the determination of an applicant's eligibility or examination scores, which has, or may have, a material bearing on certification or appointment from the resulting eligible list, shall correct the error and report the error to the affected applicant.

**§ 602.16. Calculation of final earned ratings.**

(a) When test scores are used to rank applicants, the requirements of this section apply. The final earned ratings of each applicant who passes all parts of an examination shall be calculated prior to the addition of any veterans' preference credit as follows:

(1) The minimum qualifying score shall be assigned a final earned rating of 60.

(2) The estimated highest score, the score which the best qualified applicant would be reasonably expected to attain, shall be assigned a final earned rating of 100.

(3) The intermediate scores shall be assigned ratings between 60 and 100 on the basis of their relationship to the qualifying score, the estimated highest score, and the reliability and accuracy of the examination procedures. Scores above the estimated highest score shall exceed 100, and shall be assigned final earned ratings on the basis of their relationship to the qualifying score and the estimated highest score.

(b) When test scores are used to categorize or group similarly qualified applicants, all applicants in a category shall be assigned the same final earned rating.

**§ 602.17. 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 may not be broken. All available eligibles with the same final earned rating shall be certified in accordance with the rule of three or an alternate rule selected by the appointing authority. 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 similarly qualified.

**§ 602.18. Examination analysis and alternatives.**

(a) The Office of Administration will initiate analysis of examinations as necessary to ensure that examinations do not discriminate on the basis of nonmerit factors.

(b) The Office of Administration, after investigation, may invalidate all or part of the examination results and substitute an alternative method of examination. The Office of Administration will notify applicants of the action and the reasons therefore.

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

An applicant who wishes to challenge a finding of ineligibility or an examination score shall submit a written request for a review of eligibility or examination results to the Office of Administration, in writing, within 20 calendar days of receipt of notice of the result being challenged. The Office of Administration will review the applicant's qualifications or examination results and provide the applicant with an explanation or revised result.

**Subchapter F. ESTABLISHMENT ELIGIBLE LISTS**

- Sec.
- 602.20. Eligible lists.

**§ 602.20. Eligible lists.**

Eligible lists shall contain the names of individuals who have qualified for and successfully passed examinations. Eligible lists shall be arranged in order of final earned ratings and must include applicable veterans' preference credits.

**Subchapter G. DURATION OF ELIGIBLE LISTS**

- Sec.
- 602.21. Extension and cancellation of eligible lists.
- 602.22. Amendment of an eligible list.

**§ 602.21. Extension and cancellation of eligible lists.**

(a) *Length of eligibility.* The duration of eligible lists will be fixed by the Office of Administration.

(b) *Replacing and integrating lists.* A newly established eligible list may replace an earlier list, appropriate for the same job. The Office of Administration may integrate an eligible list with an equivalent list established later based on final earned ratings and veterans' preference credits, 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.

**§ 602.22. Amendment of an eligible list.**

(a) *Basis for amendment.* The Office of Administration may amend an eligible list to: correct a clerical error; indicate a change in veteran status; add or remove a name; or suspend or change eligibility for certification or appointment.

(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 603. APPOINTMENT AND PROMOTION OF EMPLOYEES IN THE CLASSIFIED SERVICE

### Subchap.

- A. CERTIFICATION
- B. SELECTION AND APPOINTMENT OF ELIGIBLES
- C. SUBSTITUTE APPOINTMENTS
- D. PROBATIONARY PERIOD

### Subchapter A. CERTIFICATION

#### Sec.

- 603.1. Multiple lists.
- 603.2. Certification of eligible lists.
- 603.3. Effect of appointment from list.

#### § 603.1. Multiple lists.

An eligible list shall be composed of as many types of lists as necessary to meet employment needs in locations where positions are available.

#### § 603.2. Certification of eligible lists.

(a) *General content of certification.* The Office of Administration will certify from the appropriate lists as many names of eligibles who have applied for the position as necessary to satisfy the employment requirements of the appointing authority.

(1) Certification of eligible lists will include final earned ratings and veterans' preference eligibility.

(2) Upon request of the appointing authority, the Office of Administration will selectively certify the names of individuals eligible for veterans' preference.

(b) *Duration of certification.* A certification of names for appointment shall be valid for 90 business days after the date of certification, unless extended by the Office of Administration, and appointive action may be initiated at any time within that period.

#### § 603.3. 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 job, unless otherwise provided by law or this subpart, 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.

### Subchapter B. SELECTION AND APPOINTMENT OF ELIGIBLES

#### Sec.

- 603.4. Appointment process.
- 603.5. Removal of eligible for certification or appointment.
- 603.6. Prohibition against securing withdrawal from competition.
- 603.7. Consideration of certified eligibles.

#### § 603.4. Appointment process.

(a) *Right of choice in making appointments and promotions when using the rule of three.* Unless an appointing authority elects to use an alternate rule, the rule of three applies when making selections from employment and promotion lists. If the appropriate list contains fewer than three eligibles, the Office of Administration may, upon request of the appointing authority, certify applicants from other appropriate lists to ensure the appointing authority has at least three available 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.

(b) *Right of choice to make appointments and promotions when using an alternate rule.*

(1) When electing to use an alternate rule, the appointing authority shall notify the Office of Administration of election of an alternate rule when requesting a vacancy posting, including the specified alternate number of eligibles.

(2) Appointing authorities electing an alternate rule may not use an alternate rule unless notification has been received by the Office of Administration, as required in paragraph (1), and the Office of Administration has acknowledged the election of an alternate rule, in writing.

(3) In cases in which an examination program is open on a continuous basis, the election of an alternate rule may be initiated at any time; however, no appointment using the new rule can be made before notice of the election is given to and acknowledged in writing by the Office of Administration.

(4) The Office of Administration will certify the names of the highest-ranking individuals on the eligible list, based upon an alternate rule elected by the appointing authority. This rule does not prohibit an appointing authority from making an appointment if there are fewer than the alternate rule elected by the appointing authority.

(5) The Office of Administration reserves the right to reject an appointing authority's election of an alternate rule if it appears the use of the rule is designed to circumvent merit system principles as set forth in the act.

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

#### § 603.5. Removal of eligible for certification or appointment.

(a) *Request for removal of eligible for certification or appointment.* A request for removal of an eligible for certification or appointment is subject to the following:

(1) A request for removal of an eligible for certification or appointment whose name appears on a certification shall be promptly raised by the appointing authority.

(2) An appointing authority requesting removal of an eligible for certification or appointment shall submit a written request for removal to the Office of Administration, which shall include the basis for the request for removal and all supporting documents that were relied upon to determine that the eligible's name should be removed.

(3) A request for removal must be based upon merit-related criteria.

(4) On the same date an appointing authority submits a request for removal to the Office of Administration, the appointing authority shall send a copy of the request for removal, including all supporting documents provided to the Office of Administration, to the eligible. The copy of the request for removal sent to the eligible must include specific instructions on how to respond to the request for removal, as set forth in subsection (b).

(b) *Eligible's opportunity to respond.* An eligible may, within 10 calendar days from the mailing date of the appointing authority's request for removal, submit a written response to the Office of Administration, including any supporting documents. The eligible shall send a copy of the response and supporting documents to the appointing authority on the same date the response is submitted to the Office of Administration.

(c) *Removal.* If a request for removal is granted by the Office of Administration, the eligible's name will be removed from the appropriate list or lists, as determined by the Office of Administration, and the appointing authority will not be required to consider the eligible for appointment.

**§ 603.6. Prohibition against securing withdrawal from competition.**

A person may not influence another person to withdraw from competition for a position in the classified service, nor may a waiver of another person's rights or availability be solicited for the purpose of either improving or impairing the prospects of an applicant for appointment or promotion. The Office of Administration may take action under its authority under the act whenever it finds that a person has violated this section.

**§ 603.7. Consideration of certified eligibles.**

An appointing authority may conduct an interview or otherwise assess relative suitability for appointment of a certified eligible, but the assessment must be based on position-related criteria and be conducted in accordance with subpart.

**Subchapter C. SUBSTITUTE APPOINTMENTS**

- Sec.
- 603.8. Conditions for substitute appointments and promotions.
- 603.9. Rights of substitute employees.

**§ 603.8. Conditions for substitute appointments and promotions.**

(a) A substitute appointment or promotion shall be made to fill a permanent position whenever a probationary or regular status incumbent of the position is granted military leave.

(b) When a probationary or regular status incumbent returns from military leave, a substitute employee without prior service shall be separated from the position.

**§ 603.9. Rights of substitute employees.**

(a) A substitute employee may be granted a right to a permanent appointment because of service as a substitute when the incumbent who was granted military leave fails to return to the position within 90 calendar days after the termination of military duty.

(b) The rights of the employee to certification and appointment from an eligible list or to return to the previous position, if any, in the classified service may not be impaired by the acceptance of an appointment as a substitute.

(c) A regular or probationary employee who accepts a substitute appointment or promotion shall continue to receive the same rights and privileges to which entitled if the employee had continued to serve in a previous position with the same status. The substitute appointment will not prejudice the employee's rights to promotion, transfer, reemployment or retention in service.

**Subchapter D. PROBATIONARY PERIOD**

- Sec.
- 603.10. Duration and extension of probationary periods.
- 603.11. Effects of leaves of absence.
- 603.12. Service in higher-level position.
- 603.13. Service in same level position.
- 603.14. Restoration to eligible list.
- 603.15. Trainee jobs.
- 603.16. Probation following promotion.
- 603.17. Notice about performance.

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

(a) The length of the probationary period required for appointments and promotions for a full-time position, except for a trainee job, shall be a minimum of 6 months, defined as 180 calendar days—6 months at 30 days per month, and will be determined by the Office of Administration for each job. The probationary period for part-time positions shall be prorated according to the number of hours in the work week.

(b) The probationary period, except for a trainee job, 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 extends 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. Upon request by the Office of Administration, a copy of the notice shall be submitted by the appointing authority.

(c) The probationary period must be successfully completed by the employee for all classified service appointments or promotions before regular status is conferred. Appointing authorities must act affirmatively to confer regular status by evaluating employee performance and providing notification to the employee that such performance was satisfactory.

**§ 603.11. Effects of leaves of absence.**

A probationary employee who returns from a leave of absence shall make up the time lost on the leave by completing the unserved portion of the probationary period. When the leave exceeds 30 consecutive work days, except for military leave, the appointing authority may require that a new, full probationary period be served.

**§ 603.12. 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 job under the same appointing authority may have the period of the higher-level service credited toward the lower-level probationary period. Written notice of the credited service in the higher-level position shall be given to the employee on or before the date the probationary period expires.

**§ 603.13. Service in same level position.**

(a) A probationary employee who has been reassigned to another position in the same or a similar job by the same appointing authority, shall be credited with time served in the previous position toward the completion of the probationary period required for the present position. The probationary employee shall meet the established requirements for the new job.

(b) When a regular status employee has been returned from furlough or has demoted voluntarily to a lower job and is subsequently promoted to the job previously held, the appointing authority may waive all or part of the probationary period for the higher-level job.

**§ 603.14. Restoration to eligible list.**

If a probationary employee resigns, is removed, is granted a leave of absence, is furloughed or is demoted and requests restoration to the eligible list, the Office of Administration may authorize the restoration to the same list or a similar list to that from which appointed.

**§ 603.15. Trainee jobs.**

The Office of Administration, in cooperation with the appointing authorities and the Executive Board, may designate specific jobs for training purposes.

(1) The trainee job must correspond to a working level job.

(2) The probationary period for the training and working level will be combined and may be set by the Office of Administration 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.

(3) The employee appointed into a trainee position may not attain regular status as a trainee but shall be promoted to the working level, with regular status, if the designated training period is successfully completed.

(4) A trainee who is unsuccessful in the training shall be removed from the trainee position promptly.

(5) The appointing authority may extend probationary periods of a trainee up to the maximum of 24 months, if written notice is provided to the trainee 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 Office of Administration.

**§ 603.16. Probation following promotion.**

A regular status employee who is promoted shall serve the duration of the probationary period that is specified for the job to which promoted, subject to the following conditions:

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

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

(3) 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 job.

(4) 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.

**§ 603.17. 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.

**CHAPTER 604. EMPLOYEES IN THE  
CLASSIFIED SERVICE**

<b>Subchap.</b>	
<b>A.</b>	<b>SERVICE STANDARDS AND RATINGS</b>
<b>B.</b>	<b>REASSIGNMENTS AND TRANSFERS</b>
<b>C.</b>	<b>REDUCTIONS IN PAY OR DEMOTIONS</b>
<b>D.</b>	<b>RECLASSIFICATIONS; STATUS OF INCUMBENTS OF RECLASSIFIED POSITIONS</b>

**Subchapter A. SERVICE STANDARDS  
AND RATINGS**

<b>Sec.</b>	
604.1.	Establishment of system.
604.2.	Reporting of performance evaluations.
604.3.	Review of performance evaluations.
604.4.	Application of performance evaluations.

**§ 604.1. Establishment of system.**

(a) The Office of Administration, in cooperation with appointing authorities, will establish and maintain a job-related system of performance evaluations for employees in the classified service.

(b) Performance evaluations must 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 Office of Administration, in cooperation with appointing authorities, may establish work performance guides.

(c) Performance evaluation forms and procedures shall be reviewed and approved by the Office of Administration prior to utilization.

**§ 604.2. 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. All other performance evaluation reports shall be completed at least once each year, unless a different schedule is approved by the Office of Administration, and copies shall be retained in the employee's official personnel file. Upon request by the Office of Administration, performance evaluation reports shall promptly be made available for audit.

**§ 604.3. Review of performance evaluations.**

Appointing authorities shall provide the employee with the results of performance evaluations as soon as practicable after the evaluation is completed. The employee will be given an opportunity to review the performance evaluation with the rater and the reviewing officer. Appointing authorities shall inform employees of standards used in determining the evaluation.

**§ 604.4. Application of performance evaluations.**

Performance evaluations shall be utilized for purposes of determining eligibility for promotion, to assist in establishing priority for promotion, or for determining order of furlough as provided in this subpart.

**Subchapter B. REASSIGNMENTS  
AND TRANSFERS**

<b>Sec.</b>	
604.5.	Reassignments and transfers authorized.
604.6.	Initiation of transfers.
604.7.	Limitations on transfer.
604.8.	Effect of transfer on probationary period.
604.9.	Transfer of classified service employees entering the Senior Management Service.

**§ 604.5. Reassignments and transfers authorized.**

(a) An employee may be:

(1) Reassigned within the same appointing authority from one position to another in the same job or in a similar job for which the employee qualifies.

(2) Transferred from one position to another position in the same job or in a similar job within a different appointing authority.

(b) A similar job:

(1) Has the same maximum salary rate in the compensation plan.

(2) Involves essentially the same duties and responsibilities.

(3) Requires essentially the same minimum qualifications.

(4) Calls for essentially the same knowledge, skills, and abilities.

**§ 604.6. Initiation of transfers.**

*Transfers.* A transfer shall be initiated by the appointing authority having jurisdiction over the position to which the transfer is sought and must be approved by the Office of Administration. A transfer requires the written consent of the employee and the present appointing authority.

**§ 604.7. Limitations on transfer.**

The Office of Administration may disapprove a transfer not in compliance with the act and this subpart, including:

(1) When the consent and approvals required by law and this subpart have not been given.

(2) When a departmental reemployment list is in existence, appropriate for filling the position to which transfer is sought.

(3) When the employee sought to be transferred has a disqualification which would bar that person from qualifying for the position sought.

**§ 604.8. 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 requires a full probationary period in the position as a condition of the transfer.

**§ 604.9. Transfer of classified service employees entering the Senior Management Service.**

When a classified service employee accepts a Senior Management Service position, under a different appointing authority, the employee shall be transferred to the agency having the Senior Management Service position. The return right of a Senior Management Service employee shall be to a position in the classified service under the same appointing authority in which the Senior Management Service position is located.

**Subchapter C. REDUCTIONS IN PAY OR DEMOTIONS**

Sec.

- 604.10. Reductions of pay within the same job.
- 604.11. Demotions to a different job.
- 604.12. Effect of demotion on status.

**§ 604.10. Reductions of pay within the same job.**

(a) An appointing authority may reduce the salary of an employee because of unsatisfactory performance of duties or for disciplinary reasons, to a lower salary rate within the salary range prescribed for that job.

(b) Salary reduction under these circumstances will not be deemed a demotion.

**§ 604.11. Demotions to a different job.**

An appointing authority may demote an employee who requests the demotion or who does not satisfactorily perform the duties of the position to which appointed or promoted, to a position in any job in the classified service in which the employee previously had the status of a regular employee or to any position for which the employee is qualified.

**§ 604.12. Effect of demotion on status.**

Employees returned under § 603.16 (relating to probation following promotion) or demoted under § 604.11 (relating to demotions to a different job) shall be assigned status as follows:

(1) *Regular status employee.* An employee who has achieved regular status shall be assigned regular status in the job to which returned or demoted.

(2) *Probationary status employee.* An employee who has never held regular status in a job shall be assigned probationary status in the job to which returned or demoted and shall be required to successfully complete the probationary period begun at a higher level. An employee who held regular status in a lower-level job shall be assigned regular status in the job to which the employee is returned or demoted.

**Subchapter D. RECLASSIFICATIONS; STATUS OF INCUMBENTS OF RECLASSIFIED POSITIONS**

Sec.

- 604.13. Reclassifications.
- 604.14. Effect of reclassification on probationary and regular status.

**§ 604.13. Reclassifications.**

(a) When an employee's job duties change or the Executive Board changes a job and a reallocation of the position becomes necessary, the employee shall be reclassified to the new job if the employee meets the established requirements. If the reclassification is to a lower level, it will not be construed as a demotion and the reclassified employee shall be credited with seniority acquired in the higher-level job.

(b) Appointing authorities shall submit requests for reclassification in writing to the Office of Administration and shall include justification as to why reclassification of the position is necessary.

(c) The Office of Administration reserves the right to deny an appointing authority's request for reclassification if it appears the request is designed to circumvent merit system principles as set forth in the act.

**§ 604.14. Effect of reclassification on probationary and regular status.**

An incumbent reclassified laterally or to a lower-level job shall retain current status.

**Subchapter E. COMPENSATION**

Sec.

- 604.15. Effect of change in compensation schedules.

**§ 604.15. Effect of change in compensation schedules.**

Revision of the established schedule of compensation for a job, with no significant change in job specifications as determined by the Office of Administration, will have no effect upon the status and seniority of employees. Changes in compensation may not be construed as promotions or demotions.

## CHAPTER 605. SEPARATION OF EMPLOYEES FROM CLASSIFIED SERVICE

### Subchap.

- A. FURLOUGH
- B. REMOVAL AND SUSPENSION
- C. RESIGNATION
- D. LEAVE OF ABSENCE
- E. SENIORITY

### Subchapter A. FURLOUGH

#### Sec.

605.1. General provisions.

#### § 605.1. General provisions.

(a) *Reasons.* Furloughs shall occur only because of lack of funds or work.

(b) *Preference in retention.* An appointing authority will not furlough a regular employee while a probationary, provisional, temporary or emergency employee is employed in the same job, in the same furlough unit designated by the appointing authority. An appointing authority will not furlough a probationary employee while a provisional, temporary or emergency employee is employed in the same job and furlough unit.

(c) *Furlough units.* Furloughs will be conducted within approved furlough units. For purposes of this section, a furlough unit shall be defined as all employees in the job within an affected institution, division, bureau or a combination of the institutions, divisions or bureaus within an agency. Each appointing authority will submit recommended furlough units to the Office of Administration. Once approved by the Office of Administration, the furlough units will be used for subsequent furloughs. Changes to approved furlough units shall be submitted to and approved by the Office of Administration prior to use in subsequent furloughs.

(d) *Order of furlough.* When a furlough is necessary, the last annual or probationary performance evaluations, as applicable, of regular employees in the same furlough unit and job shall be converted to categories or relative ranks. The employees will be placed into quarters, and those in the lowest quarter will be furloughed or returned under subsection (e), in the inverse order of classified service seniority. Seniority for this purpose shall be the length of continuous service in the classified service if there has been no break in service.

(e) *Right of return before furlough.* Upon notification of, and until the effective date of furlough, a regular employee to be furloughed shall have a right of return to vacant positions in the appointing authority in any job and status previously held, or to a job and status in the same or lower levels, if the employee meets the minimum qualifications. A probationary employee will be restored to the eligible list from which appointed or to the job previously held if the probationary status resulted from promotion.

(f) *Mandatory reemployment.* A furloughed employee who is unable to exercise their right of return will be given a mandatory 1-year preference for reemployment in the same job and appointing authority from which furloughed. The preference does not apply to vacancies to which an employee on leave of absence have priority of return, or to a filled position which has been reclassified to a higher-level job after the effective date of furlough.

(g) *Optional reemployment.* A furloughed employee who is unable to exercise their right of return also will be placed, for 1 year, on optional reemployment lists for the

job from which furloughed and for equal and lower-level jobs for which qualified, for certification to all appointing authorities.

(h) *Reemployment certification.* Requirements for certification shall be as follows:

(1) A certification from a mandatory reemployment list shall preclude issuance of a certification otherwise applicable to available vacancies except for a certification from a preferred reemployment list which shall take precedence over all other eligible lists. Certification from optional reemployment lists shall be considered equally with all other employment or promotion certifications issued for available vacancies.

(2) A furloughed employee shall be certified from mandatory reemployment lists according to their stated availabilities. The appointing authority will give reemployment preference to those on mandatory reemployment lists with higher overall performance evaluations. In cases of identical performance evaluations, furlougees with greater continuous classified service seniority will have reemployment preference.

(3) A furloughed employee shall be certified from optional reemployment lists according to their stated availabilities. The appointing authority may select any furloughed employee from the optional reemployment list.

(i) *Refusal of mandatory reemployment.* A furloughed employee who refuses reemployment in the same job, location and appointing authority from which furloughed shall forfeit all reemployment preferences and shall be considered as having voluntarily resigned as of the furlough effective date.

(j) *Refusal of optional reemployment.* A furloughed employee who refuses appointment from an optional reemployment list shall forfeit appointment eligibility for that job and lower-level jobs but shall retain mandatory preference and other optional preferences for reemployment. If preferences subsequently are not, or cannot be, exercised, the furlougees shall be considered as having voluntarily resigned as of the furlough effective date.

(k) *Separate reemployment lists.* Separate reemployment lists will be established for State and non-State agencies.

(l) *Furlough under collective bargaining agreement.* If there is a labor agreement covering the employees to be furloughed, the terms of the agreement as to furlough and reemployment procedures shall be controlling.

### Subchapter B. REMOVAL AND SUSPENSION

#### Sec.

605.2. Generally.

#### § 605.2. Generally.

(a) Just cause for removal and good cause for suspension must be based on at least one merit-related reason.

(b) An appointing authority may, for the purpose of ascertaining an employee's fitness for continued employment, suspend an employee pending the outcome of an internal or external investigation.

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

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



(c) A suspension, including during a pending internal investigation, may not exceed 60 working days in 1 calendar year.

(d) A suspension pending investigation by external agencies may be maintained up to 30 working days after conclusion of the external investigation.

(e) A suspension under 71 Pa.C.S. § 2705(f) (relating to political activity) may not exceed 120 working days.

**Subchapter C. RESIGNATION**

Sec.	
605.3.	General.
605.4.	Notice of acceptance or rejection.
605.5.	Reemployment after resignation.
605.6.	Resignation following leave of absence.

**§ 605.3. General.**

(a) A resignation shall consist of a voluntary termination of employment evidenced by an affirmative statement, either written or verbal, of the employee's intent to resign.

(b) Written notices of resignation should include:

- (1) The employee's signature.
- (2) The date of signature and the date the resignation is to take effect.
- (3) An affirmative statement of the employee's intent to resign.

**§ 605.4. Notice of acceptance or rejection.**

(a) Unless the employee is being investigated or removal action is pending, an appointing authority may not reject a resignation which gives at least 2 weeks' notice.

(b) The acceptance of a resignation may not bar an appointing authority from giving notice of removal thereafter for causes which occur or become known during the period between the acceptance and the effective date of the resignation.

(c) A written resignation specifying no effective date shall take effect immediately.

(d) The appointing authority's acceptance of resignation shall be evidenced by written notice to the resigning employee within 15 calendar days after the appointing authority's receipt of the notice of resignation.

(e) A resignation may not be withdrawn without the written consent of the appointing authority once it has been accepted, in writing, by the appointing authority.

(f) A resignation that has not been accepted by the appointing authority may be withdrawn by the employee at any time prior to acceptance or the effective date.

**§ 605.5. Reemployment after resignation.**

(a) *Initiation of action.* An appointing authority may reinstate a former regular status employee who resigned or otherwise voluntarily separated from civil service employment to a position in the same or similar job from which the employee resigned. The appointing authority shall submit a current application of the former employee to the Office of Administration and verify that the former employee is in all respects qualified and able to serve in the job involved.

(b) *Approval.* The Office of Administration will approve the request if:

- (1) The former employee is qualified for the position sought.
- (2) The rights of persons on reemployment or preferred lists would not be violated by the reinstatement.

(c) *Probationary period after reinstatement.* The appointing authority may waive the probationary period if the former employee returns within 2 years after resignation. If more than 2 years have expired, the reinstated employee shall serve the probationary period prescribed for the job to which returned.

**§ 605.6. Resignation following leave of absence.**

A voluntary resignation submitted during or at the termination of a leave of absence shall be effective on the date thereof.

**Subchapter D. LEAVE OF ABSENCE**

Sec.	
605.7.	General.
605.8.	Extension or renewal of leave.
605.9.	Returning employees.

**§ 605.7. General.**

(a) A leave of absence may be granted at the discretion of the appointing authority and shall be granted for a definite period, up to a 2-year increment of time.

(b) A leave of absence for more than 2 years shall be deemed the equivalent of a resignation as of the date of termination of the leave, unless the leave has been extended or renewed as provided in this subchapter.

(c) This section does not apply to military leave of absence, or to a leave of absence granted to a classified service employee to occupy a position in the Senior Management Service.

**§ 605.8. Extension or renewal of leave.**

(a) *For illness or disability.* Leave of absence may be extended beyond the initial period granted by the appointing authority, if the circumstances indicate that illness or disability will render the employee temporarily incapable of efficiently performing the duties of the position at the scheduled termination of the leave.

(b) *For military service.* Leave of absence granted for military purposes shall extend for the period of service.

(c) *For employment in the unclassified service.* Leave of absence granted to an employee for a position in the unclassified service may be renewed for additional periods not exceeding 2 years in each instance, up to a maximum of 12 years after the date the leave commenced.

(d) *For employment in a position in the Senior Management Service.* Leave of absence granted to an employee to take a position in the Senior Management Service shall extend without necessity for renewal, until the employee leaves the Senior Management Service.

**§ 605.9. Returning employees.**

(a) An employee's right of return is not restricted to a vacancy at the geographic location from which leave was granted.

(b) An employee may return to a vacancy whenever available for reemployment during the period of approved leave, if the employee has given written notice to the appointing authority of the employee's availability.

(c) Upon expiration of a leave of absence or after an employee requests return from leave of absence, an employee's refusal of reemployment in the job and at the location from which leave was granted shall result in the employee's removal from the preferred reemployment list.

(d) An employee may return to an appointing authority other than the one from which leave was granted at the discretion of the gaining appointing authority.

**Subchapter E. SENIORITY**

Sec.  
605.10. Break in service.

**§ 605.10. Break in service.**

(a) *Break in Service.* Any of the following shall constitute a break in service:

- (1) Removal for just cause.
  - (2) Resignation.
  - (3) Retirement.
  - (4) Failure to report after notification of appointment through mandatory, preferred or optional reemployment rights.
  - (5) Expiration of mandatory, preferred or optional reemployment rights.
  - (6) Failure to report after leave and acceptance of other permanent employment while on leave of absence without pay.
- (b) If a break in service occurs, the employee shall lose accrued seniority.
- (c) Periods of furlough and approved leave of absence without pay shall be deemed continuous employment for seniority purposes, except that the period of furlough or leave of absence without pay will not be counted toward seniority.
- (d) Demotion for cause shall terminate seniority in the job from which demoted.

**CHAPTER 606. PROHIBITIONS,  
PENALTIES AND ENFORCEMENT****Subchap.**

- A. OFFICE OF ADMINISTRATION REVIEW OF LEGALITY OF EMPLOYMENT**
- B. POLITICAL ACTIVITY**
- C. REMOVAL AND DISQUALIFICATION OF OFFICERS AND EMPLOYEES**

**Subchapter A. OFFICE OF ADMINISTRATION  
REVIEW OF LEGALITY OF EMPLOYMENT**

Sec.  
606.1. Report of personnel change.  
606.2. Action on appointment or personnel change.  
606.3. Effect of out-of-class work.

**§ 606.1. Report of personnel change.**

Each appointing authority shall promptly report to the Office of Administration an appointment or change in position, status or residence of an employee in the classified service under its jurisdiction, or a permanent change in the salary or other basis upon which an employee is paid and the effective date of the change.

**§ 606.2. Action on appointment or personnel change.**

Whenever the Office of Administration determines that an appointment or personnel change is not in accordance with the act and this subpart, the Office of Administration will notify the appointing authority in writing, including the reasons for the determination and the required corrective action.

**§ 606.3. Effect of out-of-class work.**

When it is determined that an employee is filling a position under a job other than that for which examined and certified, or is performing duties or assuming responsibilities which do not properly belong to the position for which examined and certified, except during an emergency period, the Office of Administration may take appropriate action consistent with the act.

**Subchapter B. POLITICAL ACTIVITY**

Sec.  
606.4. Prohibited political activities; exception and applicability.  
606.5. Complaint procedure.  
606.6. Complaint content.

**§ 606.4. Prohibited political activities; exception and applicability.**

(a) Notwithstanding the political activities expressly prohibited by the act, classified service 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 who is the candidate. For other civil service employees, the restrictions on political activity remain in effect for school board director elections.

(b) The provisions of the act which expressly prohibit certain political activities do not apply to the classified service employee who has been furloughed or who is on a regular unpaid leave of absence, a leave of absence to take a noncivil service position, or a leave of absence subject to Chapter 53 of the State Employees' Retirement Code in 71 Pa.C.S. § 5302(b) (relating to credited State service). An employee on any other 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 shall immediately cease the political activities prohibited by the act. An 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 may not seek and accept appointment, nomination and election for a new term in office.

**§ 606.5. Complaint procedure.**

A complaint against a classified service employee for engaging in prohibited political activity shall be addressed to the Office of Administration and will be promptly investigated.

**§ 606.6. Complaint content.**

A complaint must contain sufficient details of the alleged prohibited political activity so as to enable proper investigation by the Office of Administration.

**Subchapter C. REMOVAL AND  
DISQUALIFICATION OF OFFICERS AND  
EMPLOYEES**

Sec.  
606.7. Falsification or concealment of material information.  
606.8. Notice of violation of act or regulations.  
606.9. Penalty for violation.

**§ 606.7. Falsification or concealment of material information.**

Whenever the Office of Administration determines that an employee has been appointed or promoted as a result of having furnished false information or concealed material information, the Office of Administration will give written notice of the determination to the appropriate appointing authority. The notice will contain a reference to 71 Pa.C.S. § 2706 (relating to removal and disqualification of officers and employees) and will include instructions as to the remedial actions to be taken by the appointing authority.

**§ 606.8. Notice of violation of act or regulations.**

Whenever the Office of Administration determines that an employee has violated the act or this subpart, the Office of Administration will give written notice to the

appropriate appointing authority of the determination, including appropriate corrective actions.

**§ 606.9. Penalty for violation.**

If after due inquiry, an employee has been found to have violated the act or this subpart and has been penalized by removal from the classified service under 71 Pa.C.S. § 2706 (relating to removal and disqualification of officers and employees), the employee shall be ineligible for reappointment to any position in the classified service for a period of time determined by the Office of Administration. In setting the period of ineligibility, the Office of Administration may, in its discretion, determine that permanent ineligibility is appropriate.

**CHAPTER 607. NOTICE AND HEARINGS**

**Subchap.**

- A. NOTICE**
- B. PRACTICE AND PROCEEDINGS BEFORE THE OFFICE OF ADMINISTRATION**

**Subchapter A. NOTICE**

**Sec.**

- 607.1. Written notice required.
- 607.2. Personnel actions.
- 607.3. Statement of reasons.
- 607.4. Signatory authority.

**§ 607.1. Written notice required.**

(a) Each appointing authority shall provide written notice of personnel actions affecting employees.

(b) When the appointing authority notifies an employee of a furlough or a suspension, it shall simultaneously submit a copy of the notice to the Office of Administration.

(c) The notice requirements in this section are mandatory. Failure to adhere to the notice requirements set forth in this section may nullify the personnel action.

(d) A written notice of personnel actions shall be provided to the employee in advance of the effective dates of the personnel actions, except in cases of suspension, acceptance of resignation or reclassification. Advance notice shall be at least 1 work day, except in circumstances of unusually serious employee infractions where continued employment would be detrimental to the appointing authority, its other employees or its clients.

(e) A written notice of a removal, furlough, involuntary demotion or suspension, or when otherwise required by the Office of Administration, shall provide information on the employee's right to appeal the personnel action to the Commission.

**§ 607.2. Personnel actions.**

Written notice shall be required for:

- (1) Appointment.
- (2) Promotion.
- (3) Removal, including the removal of a probationary employee before the expiration of the probationary period.
- (4) Suspension.
- (5) Demotion.
- (6) Furlough.
- (7) Retirement.
- (8) Resignation.
- (9) Transfer.
- (10) Reassignment.
- (11) Leave of absence.

(12) Extension or reduction of probationary period.

(13) Compensation changes, except salary increments, general pay increases, or special pay for such things as overtime or out-of-class work.

(14) Performance evaluation.

(15) Reclassification.

(16) Return to a position or job held prior to promotion.

**§ 607.3. Statement of reasons.**

A notice of removal, involuntary demotion or suspension issued to a regular employee shall include a clear statement of the reason(s) for the personnel action, sufficient to apprise the employee of the grounds upon which the charges are based. A notice determined to be defective may result in the reversal of the personnel action.

**§ 607.4. Signatory authority.**

A personnel action notice shall be signed by the agency head, or a designated subordinate. If this responsibility has been delegated within the appointing authority, the delegation shall be submitted in writing to the Office of Administration and identify the designees by specific work title. A subordinate properly delegated signatory authority by the appointing authority may not further delegate the authority. For performance evaluations, the designated subordinate shall be the employee's immediate supervisor and the appointing authority is not required to submit written notification of work titles to the Office of Administration for this purpose.

**Subchapter B. PRACTICE AND PROCEEDINGS BEFORE THE OFFICE OF ADMINISTRATION**

**Sec.**

- 607.5. Applicability of General Rules of Administrative Practice and Procedure.
- 607.6. Hearings before the Office of Administration.
- 607.7. Representation.
- 607.8. Authority of presiding officer.
- 607.9. Record of proceedings.
- 607.10. Evidence.
- 607.11. Subpoenas.
- 607.12. Post-hearing briefs.
- 607.13. Final disposition.

**§ 607.5. Applicability of General Rules of Administrative Practice and Procedure.**

This subchapter is intended to supersede 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The General Rules of Administrative Practice and Procedure are not applicable to activities of and proceedings before the Office of Administration.

**§ 607.6. Hearings before the Office of Administration.**

(a) *Public access.* All hearings scheduled by the Office of Administration under its authority under the act shall be open to the public.

(b) *Presiding officer.* The Secretary of Administration, or a designee authorized by the Secretary of Administration in writing, shall conduct hearings scheduled by the Office of Administration under its authority under the act.

(c) *Discretionary hearings.* Hearings conducted under 71 Pa.C.S. § 2202(a)(10) (relating to duties of Office of Administration) may be convened at the sole discretion of the Office of Administration. The burdens of proof and production shall be determined by the presiding officer, if necessary.

(d) *Eligible list cancellation hearings.* Under 71 Pa.C.S. § 2307(d) (relating to duration of eligible lists), the Office of Administration will hold a hearing before cancelling the whole or a part of an eligible list due to illegality or fraud in connection with the eligible list.

(e) *Notice of hearing.* The Office of Administration shall provide advance notice of a scheduled hearing to interested individuals and appointing authorities. The notice will contain a statement of the matters to be addressed at the hearing, as well as specific instructions regarding the date, time and place of hearing. The Office of Administration shall post all hearing notices on its web site in advance of a hearing.

(f) *Consolidation of proceedings.* The Office of Administration may consolidate two or more proceedings at its discretion where the proceedings involve a common question of law or fact, provided that such consolidation does not prejudice any interested individual or appointing authority.

(g) *Severance of proceedings.* The Office of Administration may sever two or more proceedings at its discretion where the proceedings lack a common question of law or fact, provided that such severance does not prejudice any interested individual or appointing authority.

(h) *Continuances.* The presiding officer may, upon a showing of good cause, grant a request for a continuance of a scheduled hearing. The requests shall be submitted as far in advance of the scheduled hearing date as possible, be made in writing, and must state the specific reason(s) for the continuance request.

(i) *Failure to attend a hearing.* When a properly notified interested individual or appointing authority fails to appear at a hearing, the hearing may be held without the participation of the individual or appointing authority and, thereafter, the presiding officer may take appropriate action in due course.

(j) *Additional hearings and evidence.* After the conclusion of a hearing, but prior to the issuance of a final disposition, the presiding officer may, upon its own motion or upon request of an interested individual or appointing authority, allow one or more additional hearings or the submission of additional evidence.

#### § 607.7. Representation.

An interested individual may appear on their own behalf or be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania or a legal intern certified by the Supreme Court of Pennsylvania. Appointing authorities shall be represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania or a legal intern certified by the Supreme Court of Pennsylvania. A representative of an interested individual or appointing authority shall file an entry of appearance with the Office of Administration.

#### § 607.8. Authority of presiding officer.

A presiding officer has the discretionary authority to do the following:

- (1) Regulate the conduct of hearings, including the scheduling, recessing, reconvening, and adjournment thereof, and to do acts and take measures necessary or proper for the efficient conduct of hearings.
- (2) Administer oaths and affirmations.
- (3) Receive evidence.
- (4) Rule upon offers of proof and evidentiary objections.

(5) Hold appropriate conferences before or during hearings and order the parties to submit memoranda in advance of the conference.

(6) Dispose of procedural requests, including discovery, or similar matters.

(7) Specify the manner in which pleadings are to be submitted to the presiding officer, including the format and contents of these documents.

(8) Require that an interested individual or an appointing authority, prior to the hearing, file a witness list and/or a list of documents to be presented at the hearing.

(9) Take other actions as necessary and appropriate to discharge the presiding officer's vested duties, consistent with statutory authority, regulations, and applicable Office of Administration directives, policies and guidelines.

#### § 607.9. Record of proceedings.

A complete record of the proceedings shall be made. Interested individuals and appointing authorities shall make arrangements to purchase copies of the record directly with the reporting service. The Office of Administration's copy of records may be reviewed at the Office of Administration's office in Harrisburg. Arrangements for this review service may be made by contacting the Office of Administration.

#### § 607.10. Evidence.

A hearing before the Office of Administration shall be formal but need not adhere to the technical rules of evidence or procedure. In cases involving issues of fact, oral testimony shall be under oath or affirmation.

#### § 607.11. Subpoenas.

##### (a) Procedure for requesting subpoenas.

(1) A subpoena for the attendance of witnesses or for the production of documents will be issued only upon written application to the presiding officer, with a copy to the non-requesting interested individual or appointing authority. Notwithstanding the forgoing, the presiding officer may, by motion, issue a subpoena for the attendance of witnesses or the production of documents.

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

(3) A subpoena 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 presiding officer; except that subpoenas issued prior to the commencement and continuance of the hearing may be reissued upon written request.

(4) Failure to adhere to the requirements of this subsection may result in the refusal to issue the requested subpoena.

##### (b) Service of subpoenas.

(1) A subpoena for the attendance of a witness must be personally served at least 48 hours prior to the hearing, unless the witness agrees to waive the 48-hour requirement.

(2) A subpoena for the production of documents may be served personally, by mail, by facsimile machine, or by other electronic means upon the individual in possession of the documents, the legal counsel for the appointing authority, or the agency head, who may designate a

knowledgeable alternate as custodian of the documents. A subpoena for the production of documents shall be served no later than 5 business days prior to hearing.

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

**§ 607.12. Post-hearing briefs.**

The parties will be notified of the procedure and schedule for the submission of briefs. Parties submitting briefs shall submit the original and an electronic copy to the presiding officer. Briefs filed outside of the time period or sequence specified will be considered only at the discretion of the presiding officer.

**§ 607.13. Final disposition.**

After the closing of the record, the Secretary of Administration will issue a final disposition of the matter. Where the presiding officer is not the Secretary of Administration, the presiding officer will draft a proposed final disposition, which the Secretary of Administration may adopt in whole, or in part, as the final disposition of the matter.

[Pa.B. Doc. No. 19-414. Filed for public inspection March 15, 2019, 9:00 a.m.]

**Title 58—RECREATION**

**FISH AND BOAT COMMISSION**

**[ 58 PA. CODE CH. 75 ]**

**Fishing; Endangered Species**

The Fish and Boat Commission (Commission) amends Chapter 75 (relating to endangered species). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments update the Commission’s lists of endangered and candidate species.

**A. Effective Date**

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

**B. Contact Person**

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission’s web site at [www.fishandboat.com](http://www.fishandboat.com).

**C. Statutory Authority**

The amendments to § 75.1 (relating to endangered species) are published under the statutory authority of section 2305 of the code (relating to threatened and endangered species). The amendments to § 75.3 (relating to candidate species) are published under the statutory authority of 2102 of the code (relating to rules and regulations).

**D. Purpose and Background**

The specific purpose and background of the amendments is described in more detail under the summary of changes.

**E. Summary of Changes**

(1) Pugnose Minnow (*Opsopoeodus emiliae*) is a small (40–55 mm), silver and olive colored, slender and com-

pressed minnow with a nearly vertical mouth it uses to feed on microcrustaceans at the water’s surface. It inhabits sluggish streams, lakes, wetlands and oxbows, usually where dense vegetation or coarse woody debris is present. It occurs in waters that are clear or turbid. In this Commonwealth, it occurs in a low gradient, turbid stream sections with limited submerged and emergent vegetation, but with considerable downed, in-stream woody debris.

The Pugnose Minnow occurs from the Atlantic Slope in South Carolina across the Gulf Slope to Texas, and northward in the Mississippi River and Great Lakes systems to southern Wisconsin and Ontario (Page and Burr 2011).

The Pugnose Minnow was first collected in this Commonwealth in 2000 (Argent and Spear 2001) and was subsequently collected in 2001 (Criswell and Fischer). In 2016, R. Criswell, D. Fischer and J. Brancato (PADEP) collected 10 individuals of this species, confirming an established population. All collections are from a short section of lower Cussewago Creek, Crawford County, totaling no more than 2 kilometers (km) in length. Although there are no older records for this species, experts consider it native here. Cussewago Creek, particularly the lowermost section where this species was collected, is difficult to sample, and the microhabitat occupied by the Pugnose Minnow is very limited. It could have very easily been overlooked, and historic sampling effort there, particularly for nongame fishes, has been very limited. In addition, this species occurred historically in northeast Ohio (Trautman 1981) and is represented elsewhere in its range by several disjunct populations (Page and Burr 2011). This species appears to be subject to population fluctuations in this Commonwealth. Five surveys were focused on this species in the occupied section of Cussewago Creek between 2006 and 2016 without success.

The level of turbidity that this population of Pugnose Minnows will tolerate is unknown, but any significant increases could be problematic. The State-endangered Hornyhead Chub, *Nocomis biguttatus*, formerly occurred in this waterway, but is now extirpated. The Commission suspects that increased turbidity during the post-1930 period is responsible for this extirpation. Increases in silt loading must be considered the greatest threat to the Pugnose Minnow.

A dam currently impounds a portion of Cussewago Creek 1.5 km below the area occupied by the Pugnose Minnow. There have been discussions concerning the removal of this dam (B. Lorson, Commission, pers. comm.). It is unclear if the removal of this dam would impact the water level or habitat in the vicinity of the Pugnose Minnow population. It is also unclear if the Pugnose Minnow occupies the impounded area.

The current status of this species was reviewed using the Commission’s documentation and objective listing/delisting process. Endangered species criteria were met in four categories: A1 (Population Reduction), B3 (Extent of Occupancy in streams is less than 10 miles), B4 (Sum of Proportion of Watersheds Occupied value < 0.2), and B5 (Severely fragmented < 6 locations). In addition, it was evaluated with NatureServe’s Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S1 meaning it is critically imperiled in the Commonwealth with a high to very high risk of extirpation due to its limited range or few populations, or both, or occurrences. The Fishes Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed this

documentation and rank assignment and recommended that the Pugnose Minnow be listed as endangered. Enough information is available to make the determination that it is endangered in this Commonwealth at present and to justify its addition to the Commonwealth's list of endangered fishes.

Therefore, the Commission orders the Pugnose Minnow be added to the list of endangered species under § 75.1.

(2) Blacknose Shiner (*Notropis heterolepis*) is a small olive to pale yellow minnow (40–65 mm) found in clear lakes and streams, where it is often associated with aquatic vegetation. In this Commonwealth, this species has been collected in pools, with rubble, gravel, and sand substrates, and completely lacks submerged vegetation.

The Blacknose Shiner is distributed from the Hudson Bay drainage east to Nova Scotia in Canada, and from Maine west to Nebraska, with extinct glacial relict populations in southern Kansas and Missouri (Gilbert 1980, Page and Burr 2011). This species is common in the north of its range but disappearing from the southern region (Page and Burr 2011).

In the glaciated northwestern portion of this Commonwealth, there are historic records from the Lake Erie drainage, Shenango River drainage and the upper Allegheny River drainage. The only recent records are from two tributaries to the Allegheny River in Erie and McKean Counties.

The Blacknose Shiner was thought to be extirpated from this Commonwealth until recently, with no collection reports from the late 1930s through 2009. It was formerly known from Erie and Crawford Counties. Following collections in 2009, the status was updated to “undetermined” and the historically occupied waterways were intensively surveyed. Populations were found in a single, small drainage in Erie County within its historically known distribution. Another population is found in a tributary to the upper Allegheny River outside of the known native range in this Commonwealth and is considered to be introduced, but it could possibly be native. The known lineal occupied distance within the native range is only 2 km and justifies a change in status from undetermined to endangered.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. Endangered species criteria were met in four categories: A1 (Population Reduction), B3 (Extent of Occupancy in streams < 10 miles), B4 (Sum of Proportion of Watersheds Occupied < 0.2), and B5 (Severely fragmented < 6 locations). In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S1—meaning it is critically imperiled in this Commonwealth with a high to very high risk of extirpation due to its limited range or few populations, or both, or occurrences. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Blacknose Shiner be listed as endangered. Enough information is available to make the determination that it is endangered in this Commonwealth at present and to justify its addition to the Commonwealth's list of endangered fishes.

Therefore, the Commission orders the Blacknose Shiner be added to the list of endangered species under § 75.1.

(3) Banded Sunfish (*Enneacanthus obesus*) are small sunfish (50–90 mm) with an olive colored body having 5–8 dark vertical bars extending to its ventral side. It occupies sluggish, calm sections of streams and rivers, as

well as bogs, marshes, swamps, ponds and lakes. It is closely associated with dense stands of rooted and suspended aquatic vegetation over substrates of silt, sand, mud and detritus.

It is native to the coastal lowlands from southern New Hampshire to central Florida in both the Atlantic and Gulf drainages (Lee 1980). In this Commonwealth, it occurred historically in the tidal portion of Delaware River drainage in Bucks, Delaware and Philadelphia Counties (Fowler 1940, Cooper 1983).

Two circa 1850 collections include 4 specimens (UMMZ 86801) and 8 specimens (ANSP 12876). Three records from 1907–1914 each contain 1 or 2 specimens (ANSP 41855, 41859 and 41874). It is obvious, given these numbers and the very limited extent of suitable Coastal Plain habitat on this Commonwealth side of the Delaware River/Estuary, that the Banded Sunfish was never particularly common or widely distributed in this Commonwealth. The 1977 collection included 3 specimens and likely represented waifs and not a population given the paucity of records before and after.

The Banded Sunfish is currently listed as an endangered species. It has not been collected or verified in this Commonwealth since 1977, when 3 specimens were taken from an impingement screen at a power plant on the Delaware River near Philadelphia in Delaware County (Cooper 1983). All earlier records are from the Coastal Plain in Bucks and Philadelphia Counties, and predate 1915 (Stauffer et al. 2016). Despite targeted sampling by multiple researchers (R. Criswell, Academy of Natural Sciences in Philadelphia and Philadelphia Water Department), no specimens have been collected and most suitable historic habitat has been altered or destroyed (Criswell 1998, Horwitz et al. 2006, unpublished data). Based on this information, it can be surmised that this species no longer occurs in this Commonwealth and should be removed from the Commonwealth's endangered species list.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. Because there are currently no extant records of the Banded Sunfish, no threatened and endangered species listing criterion were met. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Banded Sunfish be delisted. Enough information is available to make the determination that it no longer occurs within this Commonwealth at present and to justify its removal from the Commonwealth's list of endangered fishes.

Therefore, the Commission orders that the Banded Sunfish be removed from the Commonwealth's list of endangered species under § 75.1.

(4) Gravel Chub (*Erimystax x-punctatus*) is a slender, medium-sized (65–95 mm) yellow to olive green chub that inhabits large creeks and rivers with clear to somewhat turbid water, over substrate that includes significant amounts of clean sand, gravel and rock. It is essentially a benthic fish that occurs in riffles and runs, in both shallow and deeper water.

The Gravel Chub is native from southern Ontario and western New York west to Minnesota and south to Arkansas. It was known to inhabit the Ohio River basin of western Pennsylvania (and New York) with most of the verified occurrences associated with the Allegheny River.

The historic distribution of the Gravel Chub is somewhat obscured by its taxonomic past. The Gravel Chub

was recognized as distinct relatively recently and wasn't formally described as a species until 1956 (Hubbs and Crowe), well after the collection record had begun. It is likely that early reports of the generically similar Streamline Chub, *Erimystax dissimilis* included the Gravel Chub. Cope (1881) reported the Streamline Chub to be "especially numerous in the creeks of Western Pennsylvania."

The Commission is aware of 13 collections of the Gravel Chub from this Commonwealth. Collections made before the species description (Hubbs and Crowe 1956) were re-identified from museum specimens. The earliest was made by Edward D. Cope in the late 1800s from the Youghiogheny River (later identified by Robert E. Jenkins, ANSP1824). This collection indicates that the Gravel Chub was likely much more widely distributed initially in the upper Ohio River basin than indicated by later collections. The subsequent 12 collections were all made during the period 1935–1985 from the Allegheny River or from the lower reaches of tributaries to the Allegheny River. Similarly, Carlson et al. (2016) reported on collections known from the Allegheny River in New York during this same period with no occurrences reported after 1979.

There are no recent verified reports of Gravel Chubs from the Allegheny River drainage. From approximately 2000 to present, the rivers of the Ohio River drainage in western Pennsylvania have been intensively surveyed with electrofishing and trawling gears at hundreds of sites (Koryak et al. 2009, Freedman et al. 2009, Lorson 2009, Koryak et al. 2011, Stauffer et al. 2016, Commission unpublished data). Efforts by R. Criswell and D. Fischer have also specifically targeted the Gravel Chub at historic collection localities and areas containing seemingly optimum habitat. Despite the collective ability of these efforts to detect changes in the status of species requiring similar environmental conditions (for example, Streamline Chub, Mountain Madtom, Northern Madtom, Channel Darter, Longhead Darter, River Darter, Gilt Darter, Bluebreast Darter, Tippecanoe Darter, Spotted Darter), no verified specimens of Gravel Chubs have been collected. The lack of collections of the Gravel Chub in western Pennsylvania and New York indicate that it is now likely extirpated from the "Three Rivers" drainage area.

This species is of moderate concern globally. Although locally common in some areas, populations are declining over much of its range (Page and Burr 2011). The Ontario and Kentucky populations have been extirpated. Trautman (1981) suggested that increased siltation was responsible for a contraction of its range in Ohio. Impoundments are likely a contributing factor in reducing suitable habitat by altering flow and promoting the deposition of silt. Carlson et al. (2016) reported that one historic locality in New York is now inundated by the Allegheny Reservoir. On the Monongahela River and lower Allegheny River, a series of navigational locks and dams and urban development have extensively altered natural habitats. The dredging industry has utilized the impounded sections of the upper Ohio River and Allegheny River to mine glacial sand and gravel, further altering the river bottoms.

The disappearance of the Gravel Chub from this Commonwealth and New York remains somewhat of a mystery. The Gravel Chub was apparently able to survive in the Allegheny River drainage throughout most of the 1900s as indicated by collections during 1935–1985. Environmental quality generally improved in the Alle-

gheny River drainage in the 1970s and 1980s largely due to the implementation of the Clean Water Act (Koryak et al. 2009). During this period, many lithophilic fishes reinvaded portions of the Allegheny River drainage where pollution had been problematic, and in some areas, these fishes have become abundant (Ortmann 1909, Stauffer et al. 2016; Commission unpublished data). Apparently, the Gravel Chub did not benefit similarly.

Trautman (1981) observed that competition between the Gravel Chub and its congener, the Streamline Chub, appeared to be rather keen, especially while feeding. The Streamline Chub is presently well distributed and common to abundant in the Allegheny River and its larger tributaries (Stauffer et al. 2016, Commission unpublished data). It is also present in the upper Ohio River. In the state of Ohio, where Gravel Chubs and Streamline Chubs are still found together, these species appear to segregate into different habitats. Brian Zimmerman (Ohio State University Museum of Biodiversity) provided the following personal communication discussing his observations in Ohio.

"In Ohio the Streamline Chub *Erimystax dissimilis* and Gravel Chub *E. x-punctatus* both have greatly increased in abundance and distribution over the past 20–30 years. They do seem to differ in habitat in that the Streamline Chub is found in smaller and clearer streams than the Gravel Chub. In our two large river systems that have large populations of both (Muskingum and Scioto rivers) the Gravel Chub stays almost entirely in the main stem and the largest of tributaries where the turbidity of the water is often greater. Streamline Chubs in these two systems are found significantly further upstream and in smaller tributaries to these systems. The water clarity may just be a factor of stream size. These two also differ in habitat preference in that Streamline Chub are more often in deeper water in more "run-like" habitat and Gravel Chub are often found shallower on large gravel riffles of the large rivers they inhabit in Ohio. Clarity and or depth may be playing a role in why Streamline Chub have expanded into the upper Ohio River and a few tributaries on the eastern edge of Ohio. This presumably is a downstream extension of the very large population in PA in the Allegheny and upper Ohio Rivers. Gravel Chub on the other hand have not been found in this area."

Experts speculate that historic habitat modification in the upper Ohio River basin and possibly interspecific competition have contributed to the extirpation of the Gravel Chub from the Allegheny River drainage. It appears that turbidity presently plays a role in the distribution of Gravel Chub populations as they recolonize waters in Ohio. As polluted waters in western Pennsylvania have recovered throughout the late 1900s, they have become clearer. It is possible that this has played an additional role in further reducing optimal conditions for the Gravel Chub or by providing a competitive edge for the Streamline Chub.

The Gravel Chub is currently listed as endangered in this Commonwealth. The Gravel Chub persisted in this Commonwealth and New York in the Allegheny River basin throughout the worst period of pollution during the early and mid-1900s. Despite this, it hasn't been observed in this Commonwealth since 1985. Many intensive fisheries survey efforts have been conducted recently throughout its range here, including specific efforts targeted at the Gravel Chub. Based on this information, it appears that this species no longer occurs in this Commonwealth and should be delisted from the endangered species list.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. Because there are currently no extant records of the Gravel Chub in this Commonwealth, no threatened and endangered species listing criterion were met. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Gravel Chub be delisted. Enough information is available to make the determination that it no longer occurs within this Commonwealth at present and to justify its removal from the Commonwealth's list of endangered fishes.

Therefore, the Commission orders that the Gravel Chub be removed from the Commonwealth's list of endangered species under § 75.1.

(5) Central Mudminnow (*Umbra limi*) is a relatively small (54 mm), elongated fish that occurs in marshes, swamps, springs, ditches, lake margins and the pools of smaller streams. It is usually found in the presence of dense vegetation and soft substrates, but they have been collected in shaded, stagnant, swampy areas that lack vegetation. Suitable substrates include thick organic material, gravel, sand and silt (Stauffer et al. 2016). Becker (1983) noted a preference for clear water that may be stained light or dark brown, and it is found less frequently in turbid conditions.

Central Mudminnows are known from the St. Lawrence River drainage west through the Great Lakes to southern Manitoba, and south through the Mississippi River Basin to western Tennessee (Gilbert 1980). In this Commonwealth, they occur in the Shenango and upper Allegheny river systems, and Lake Erie drainages (Stauffer et al. 2016).

Historically, the Central Mudminnow was found to be rather widely distributed in northwestern Pennsylvania during the period 1990—present, and is known to occur in Crawford, Mercer, Erie, Venango and Warren Counties at present (Stauffer et al. 2016). A lack of recent records from Beaver and Lawrence Counties is most likely an artifact of inadequate targeted surveys there. A number of post-1990 collections include 10 or more individuals, and 150 individuals were counted at one Erie County site in 2009. The Central Mudminnow is common to abundant in the Conneaut Marsh and wetlands in the Pymatuning region; these rather extensive wetlands are the largest in this Commonwealth.

There are no recent records from the extreme southernmost portion of its range in this Commonwealth. However, given its preference for vegetated wetlands and other waterways that are difficult to survey or are not typically sampled by fishery managers and ichthyologists, it is likely that a significant number of populations exist that have not yet been detected. Although wetlands acreage has declined significantly in this Commonwealth, and the Central Mudminnow was probably more abundant prior to those losses, it is still rather widespread and locally common.

The Central Mudminnow was listed as a candidate species of this Commonwealth in 1991. It occurs in the Shenango and upper Allegheny river systems, and Lake Erie drainages. Since its listing, a significant amount of field work has been performed in this species' native drainage, and many additional populations have been documented in five counties. At some sites the Central Mudminnow was found to be common or abundant. Experts believe that many undetected populations remain, due to this species' specialized habitat and occupa-

tion of wetlands that are not typically surveyed by fishery managers or ichthyologists. Based on this information, we believe that removal of this species from the list of candidate species is appropriate.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds Criterion B.3 (Extent of Occupancy) because it occupies more than 150 river miles of waterway. Additionally, Criterion B.5 for candidate status is exceeded: no extreme fragmentation and no fluctuation or decline of populations has been documented or suspected and more than 20 occurrences have been documented or suspected. In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S4—meaning it is secure in this Commonwealth with a very low risk of extirpation due to its extensive range or many populations, or both, or occurrences. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Central Mudminnow be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth's list of candidate fishes.

Therefore, the Commission orders that the Central Mudminnow be removed from the Commonwealth's list of candidate species under § 75.3.

(6) Eastern Mudminnow (*Umbra pygmaea*) is a larger mudminnow (107 mm) that inhabits backwaters, braided creek mouths, wetlands, vegetated and soft-bottom lake margins, and sluggish or still sections of streams. It occurs in clear to somewhat turbid water, usually where dense aquatic vegetation or decaying organic material provides adequate cover. Mudminnows can withstand low dissolved oxygen concentrations (utilizing the gas bladder as a lung), low pH and temperature extremes, making them tolerant of harsh conditions (Jenkins and Burkhead 1994, Kuhne and Olden 2014). They have been collected in slightly tannin-stained Pocono Mountains lakes and Hastings (1984) reported it from pH as low as 4.0.

The Eastern Mudminnow occurs from south-eastern New York south to the St. Johns River, Florida and west along the Gulf Slope to the Aucilla River (Gilbert 1980). In this Commonwealth, it is native to the Delaware River drainage (Stauffer et al. 2016). It has recently been reported from the Susquehanna River basin at multiple sites, where the Commission considers it to be introduced (D. Fischer, unpublished data).

The Commission is aware of 23 pre-1920 records for this species, all from the Philadelphia region (Bucks and Philadelphia Counties); between 1920 and 1990 approximately 20 collections were made, which included documentation in Carbon, Chester, Delaware, Monroe and Pike Counties (Stauffer et al. 2016; Criswell and Fischer). Most pre-1990 records document 1—9 individuals per station, but one pre-1920 collection from Bucks County (ANSP 23850) consisted of 23 individuals. There is little doubt, however, that the Eastern Mudminnow was more common than these records reflect, given its preference for debris-laden habitats and the fact that early surveyors were limited to nets and seines. Abundance data for the period 1920—1990 is lacking.

Within the last 25 years, the Eastern Mudminnow was found to be somewhat common in the Bucks, Chester, Delaware and Philadelphia Counties area and some of the Pocono Mountains region during the period 1990—present (Stauffer et al. 2016). Occurrences have been documented



by the Academy of Natural Sciences in Philadelphia in Bucks, Philadelphia, Delaware, Lackawanna, Monroe, Philadelphia, Pike and Wayne Counties (R. Horwitz, personal communication). Since 1990, extralimital collections have occurred in Bradford, Dauphin, Lackawanna and Luzerne Counties within the Susquehanna River drainage (Stauffer et al. 2016; D. Fischer and M. Bilger, unpublished data). It is unclear if the collections from the Susquehanna River drainage are indicative of bait releases or established populations. A significant amount of suitable habitat in northeastern Pennsylvania remains unsurveyed due to access issues.

The Eastern Mudminnow was listed as a candidate species of this Commonwealth in 1991. It occurs in the Delaware River drainage. Since its listing, a significant amount of field work has been performed in this species' native drainage. A number of additional populations have been documented and this species continues to exist at sites where it was documented prior to 1991. Experts believe that many undetected populations remain, due to this species' specialized habitat and occupation of wetlands that are not typically surveyed by fishery managers or ichthyologists; and given the vast amount of private land containing natural ponds and wetlands in northeastern Pennsylvania where access by surveyors is not available. Based on this information, the removal of this species from the list of candidate species is warranted.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds Criterion B.3 (Extent of Occupancy), because it occupies more than 150 river miles of waterway. Additionally, Criterion B.5 for candidate status is exceeded: no extreme fragmentation and no fluctuation or decline of populations has been documented or suspected and more than 20 occurrences have been documented or suspected. In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S4—meaning it is secure in this Commonwealth with a very low risk of extirpation due to its extensive range or many populations, or both, or occurrences. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Eastern Mudminnow be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth's list of candidate fishes.

Therefore, the Commission orders that the Eastern Mudminnow be removed from the Commonwealth's list of candidate species under § 75.3.

The Commission therefore amends §§ 75.1 and 75.3 to read as set forth in 48 Pa.B. 7532 (December 8, 2018).

*F. Paperwork*

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

*G. Fiscal Impact*

This final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. This final-form rulemaking will not impose new costs on the private sector or the general public.

*H. Public Involvement*

A notice of proposed rulemaking was published at 48 Pa.B. 7532. The Commission received one public comment opposing the amendment. Commissioners were provided with copies of the public comment.

*Findings*

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been 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, and no public comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

*Order*

The Commission, acting under the authorizing statutes, orders that:

(A) The regulations of the Commission, 58 Pa. Code Chapter 75, are amended by amending §§ 75.1 and 75.3 to read as set forth at 48 Pa.B. 7532.

(B) The Executive Director will submit this order and 48 Pa.B. 7532 to the Office of Attorney General for approval as to legality and form as required by law.

(C) The Executive Director shall certify this order and 48 Pa.B. 7532 and deposit them with the Legislative Reference Bureau as required by law.

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

TIMOTHY D. SCHAEFFER,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-282 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 19-415. Filed for public inspection March 15, 2019, 9:00 a.m.]





